



2020 Statewide
Ballot Issues

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2020 Statewide Ballot Issues:

Proposal 1 – Michigan Natural Resource Trust Fund

Proposal 2 – Protection of Electronic Data and Communications

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Craig Thiel, Research Director



- Work Experience
 - 2006 - present: Citizens Research Council
 - 1997 – 2006: House and Senate Fiscal
 - 1995 - 1997: Secretary of State
- Policy Background
 - State budget and taxation
 - K-12 education
 - Transportation
 - Inter-governmental relations
- Education
 - MPA, Wayne State University
 - BA, Kalamazoo College

Eric Lupher, President



- Work Experience
 - 33 years with the Citizens Research Council
 - President since 2014
- Policy Background
 - Local governments
 - Finance and taxation
 - Charter issues
 - Local Government Consolidation
- Education
 - MPA, Wayne State University
 - BA, James Madison College at Michigan State University

Proposal 20-1

Michigan Natural Resources Trust Fund



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What is Proposal 1?

- Constitutional amendment to Article IX, Sections 35 and 35a
 - Sec. 35 – Michigan Natural Resources Trust Fund (MNRTF)
 - Sec. 35a – Michigan State Parks Endowment Fund (MSPEF)
- Placed on ballot by Michigan Legislature in 2018
 - Voter approval would trigger implementing provisions in state law
- Key issues for voters to consider
 - Changes to constitutional earmarking provisions
 - Use and sufficiency of funding for natural resources and recreational projects



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Background

Michigan Natural Resources Trust Fund

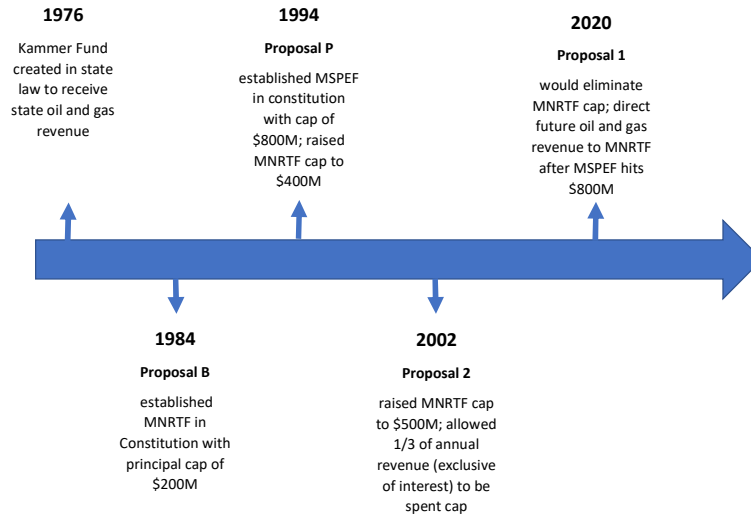
- MNRTF established in 1984 to receive oil and gas revenue from leases on state-owned land
 - Dedicate revenue to environmental, conservation, and recreational purposes
 - Build principal balance to guarantee future annual revenue stream – corpus of fund cannot be spent
 - Over time, principal cap raised from \$200M to \$500M
- Allocation formula
 - 50% of annual oil and gas revenue, plus interest earnings, can be spent each year until \$500M cap reached
 - After, only interest earnings can be spent
 - At least 25% of annual funding can be spent for land acquisition and no more than 25% for development
- \$1.2B spent on projects since 1976 – every county has benefitted from MNRTF funding
- \$500M principal cap reached in 2011

Background

Michigan State Parks Endowment Fund

- MSPEF established in 1994 to receive a portion of oil and gas revenue from leases on state-owned land
 - Received \$10M/year until 2011 when MNRTF hit its ceiling
 - Since, MSPEF receives all oil and gas revenue
 - Estimated \$800M principal balance cap – cannot be spent
- Allocation formula – annual spending limitations
 - Allowable uses – operations, maintenance and capital improvements at Michigan state parks
 - 50% of annual revenue, plus interest earnings, to be spent each year until \$800M cap reached
 - After, only interest earnings can be spent
- \$283M principal balance as of October 1, 2019
 - Projected to reach \$800M cap in early 2050s

Timeline: 1976 to Today



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Proposal 1 - Key Provisions

- Eliminate the MNRTF's \$500 million accumulated principal cap
- After the MSPEF reaches its accumulated principal cap of \$800 million, direct all revenue generated from oil and gas bonuses, rentals, and royalties from state-owned land to the MNRTF instead of state General Fund
- Allow MNRTF interest and earnings to be spent on "renovation and redevelopment" in addition to "development" of public recreational facilities
- Require a minimum of 25 percent of the money available from the MNRTF (as opposed to the current 25 percent maximum) to be spent on development of public recreational facilities
- Limit to 50 percent the amount of MNRTF revenue received each year, in addition to the fund's interest and earnings, that the legislature may appropriate for the acquisition and development of trust fund projects
- Add "administration of the endowment fund" to the allowable purposes of the MSPEF
- Require a minimum of 20 percent of the money available from the MSPEF each year to be spent

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Issue to Consider - Earmarking

- What is earmarking?
 - Refers to the practice of reserving revenues from specific sources for specific functions.
 - Two forms: 1) fixed dollar amount and 2) fixed percentage.
- Arguments for earmarking
 - Benefit principle – those benefiting from government service pay for it
 - Provides minimum funding level for government service
 - Generates political support for government service
- Arguments against earmarking
 - Reduces discretion in spending decisions
 - Does not guarantee that non-earmarked funding will be maintained

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Proposal 1 - Earmarking

- Since 1994, all oil and gas revenue would go to the General Fund after both MNRTF and MSPEF hit their principal caps
 - Proposal 1 permanently earmarks oil and gas revenue to MNRTF
- This decision is being considered 30 years before the MSPEF hits its cap and with no clear picture of what the future holds
 - What's the rush?
 - Will the State of Michigan need these resources for another purpose?
 - What will be the condition of the state budget in 2050?
- Changing the earmarking provision will require another vote

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Issue to Consider – Use/Sufficiency of Funding

- Expands allowable uses of MNRTF revenue
 - Includes “renovation and redevelopment” in addition to “development” projects
 - Broadens the types of projects eligible for funding
 - Existing projects would be able to receive funding to maintain capital stock and prevent further deterioration
- Requires a minimum (not maximum) of 25% of annual funding to be allocated to “development” projects
 - Provides MNRTF Board more discretion in selecting projects

Bottom Line

- **If Adopted**
 - MNRTF’s current \$500 million cap would be eliminated.
 - After the MSPEF principal balance reaches \$800 million, all future oil and gas revenue would be deposited in the MNRTF instead of the General Fund.
 - The legislature would be allowed to appropriate up to 50 percent of the oil and gas revenue annually for MNRTF projects and the remainder of the revenue would be credited to the principal balance of the trust fund.
- **If Rejected**
 - The MSPEF would continue to receive oil and gas bonuses, rentals, and royalties annually until its principle balance reaches \$800 million.
 - All future oil and gas revenue would be distributed to the General Fund.
 - Annual interest and earnings of the MNRTF and the MSPEF would continue to be available for expenditure subject to legislative appropriation.

Proposal 20-2

Protection of Electronic Data and Communications



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What is Proposal 2?

- A constitutional amendment that would add electronic data and electronic communications to existing protections against unreasonable government search and seizure.
- Constitutional Amendment to Article I, Section 11
 The person, houses, papers, ~~and possessions,~~ **electronic data, and electronic communications** of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things **or to access electronic data or electronic communications** shall issue without describing them, nor without probable cause, supported by oath or affirmation. ...
- Placed on ballot by Michigan Legislature in 2019



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MI's Article I and U.S. Bill of Rights

- Article I, "Declaration of Rights," provide basic individual liberties that state government shall not impair
- Many of these individual liberties were modeled after those found in the federal Bill of Rights
- Both Article I and the Bill of Rights
 - Accord the right to equal protection of the laws, peaceful assembly, religious worship, freedom of expression and of the press
 - Prohibit depriving a person of life, liberty, or property without due process of the law
 - Provide the right to be secure in your persons, houses, papers, and effects/possession
- The Fourth Amendment to the U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Why have both?

- Evolving nature of constitutional federalism
- Interpretation of state laws/constitutions rests with state supreme courts
 - States can provide more rights than Bill of Rights, never less
- Evolving nature of technology may suggest need for states to fill vacuum because its protections are evolving under Article IV in the Bill of Rights

Warrants – Protection Against Unreasonable Search and Seizure

- A valid search warrant must meet four requirements:
 1. It must be filed in good faith by a law enforcement officer
 2. It must be based on reliable information showing probable cause to search
 3. It must be issued by a neutral and detached magistrate
 4. It must state specifically the place to be searched and the items to be seized

Electronic Data and Communications

- Electronic communications – email and text messages
- Electronic data – word processing, spreadsheets, pictures, accounting, and similar files and images
- Also
 - Telephone call records
 - Participation in online chatrooms
 - Internet search histories
 - IP addresses
 - Location data
 - Time and length of use of individual apps

Current Protections

- Electronic information considered an “effect” in the language of the Fourth Amendment
- Judicial application of Fourth Amendment to electronic data and communications is evolving
 - Few issues have made it to U.S. Supreme Court

Examples of Federal Laws:

- Pen Registers and Trap and Trace Device Statute
 - Restricts collection of metadata concerning telephone and Internet communications
- Electronic Communications Privacy Act
 - Protects email and other subscriber data stored by Internet service providers from disclosure without appropriate warrants

Who Stands to Benefit

- Clarity should lead to obtaining warrants when in doubt
 - Reducing the number of lawsuits alleging unreasonable search and seizure
 - Saving state and local governments money in legal costs
- Wealthy have greater ability to file lawsuits, so others may have rights infringed without time or means to fight it
 - Equity for all in protection of electronic data and communications

Issues to Consider

- This would not create new requirements for warrants
 - It would cause law enforcement to error on the side of seeking warrants if there is any ambiguity
- Technology is ever evolving
 - What we understand as protections today may be different than an understanding 10, 20, or 50 years from now
- It is okay to have more protections than the Bill of Rights unless courts say otherwise
 - If federal courts restrict protections of electronic data and communications, that would supersede Michigan provision

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