



South Dakota Legislative Research Council

Issue Memorandum 96-07

THE GAME, FISH, AND PARKS FUND

Introduction

A separate fund used to enforce the game laws of South Dakota has existed for nearly 100 years. This issue memo will examine the historical background, identify the revenue sources, and discuss the annual appropriation of the Game, Fish, and Parks fund.

Historical Background

The 1899 Legislature established the game fund. County commissioners used the money in the game fund to pay county game wardens to enforce the state's game laws. The initial law that established the fund read as follows:

All costs that shall be collected and all fines and penalties or shares thereof which shall be recovered and paid into the county treasury, and all moneys received for hunter's license, and the proceeds of any and all game, dogs and guns sold, shall be kept as a separate fund to be called a game fund, to be expended by the board of county commissioners toward the payment of expenses of the game wardens which shall be incurred in the enforcement of the provisions of the game

laws of this state.

The initial law has been amended many times. Appendix A summarizes the changes to the law over the years. The current statute, which has not been changed since it was codified in 1960, reads as follows:

§ 41-2-34. All moneys collected under any of the game and fish laws of this state including sums paid for licenses or on account of bonds or contracts entered into with any persons, and money due from other sources connected with the game and fish laws of this state, except fines, shall be paid into the state treasury to be credited to the department of game, fish and parks fund. Excepting receipts from sales of timber on school lands, all sums received from rentals, contracts, licenses, sales of personal property or any source, except such sums as are derived from or which have accrued through the operation of the division of forestry and parks and Custer state park, shall be paid into the state treasury and credited to the department of game, fish and parks fund.

Revenues

The Game, Fish, and Parks fund includes federal funds and other funds. The two main sources of federal revenue are wildlife restoration funds and sport fish restoration funds. The main source of other fund revenue comes from hunting and fishing licenses sold in South Dakota. The money in the fund is used to operate all of the Wildlife Division and part of the Administration Division in the Department of Game, Fish, and Parks. The Wildlife Division does not receive any general fund revenues. The table below shows revenue for the Game, Fish, and Parks Fund since fiscal year (FY) 1990.

The United States Congress enacted the Federal Aid in Wildlife Restoration Act (more commonly known as the Pittman-Robertson Act) after the principal sponsors, Senator Key Pittman of Nevada and Representative A. Willis Robertson of

Virginia) in 1937. The Pittman-Robertson Act imposes an 11% tax on firearms, ammunition, and archery equipment. The U.S. Fish and Wildlife Services distributes the money to the states for wildlife restoration projects, research projects, and surveys. The cost share for these projects is 75% Pittman-Robertson funds and 25% state funds (hunting license fees).

The Federal Aid in Sport Fish Restoration Act (more commonly known as the Dingell-Johnson Act, after the principal sponsors, Representative John Dingell, Sr., of Michigan and Senator Edwin Johnson of Colorado) was enacted in 1950. The Dingell-Johnson Act was not a new idea as it followed in the footsteps of the Pittman-Robertson Act. The Dingell-Johnson Act imposed a 10% tax on fishing equipment. The U.S. Fish and Wildlife Service distributes the money to the states based on each state’s licensed fishermen and land and water area. States use the money to build fishing/boating access sites, purchase fishing areas, and conduct research projects for

Game, Fish, and Parks Fund - Revenue Sources			
Fiscal Year	Federal Funds	Other Funds	Total Funds
1995	\$7,000,000	\$13,800,000	\$20,800,000
1994	\$6,400,000	\$12,100,000	\$18,500,000
1993	\$6,600,000	\$11,500,000	\$18,100,000
1992	\$5,500,000	\$10,400,000	\$15,900,000
1991	\$4,400,000	\$9,400,000	\$13,800,000
1990	\$3,600,000	\$9,200,000	\$12,800,000
Source: Annual Financial Reports for the SD Dept. of Game, Fish, and Parks			

managing fish populations. The cost share

for these projects is 75% Pittman-Robertson

funds and 25% state funds (fishing license fees). In 1984 an amendment extended the 10% tax to tackle boxes and other recreational fishing equipment; and a 3% tax was applied to trolling motors and sonar fish finders. This amendment is commonly known as the Wallop-Breaux amendment, for Senator Malcolm Wallop of Wyoming and Representative John Breaux of Louisiana.

States are required to pass legislation which assents to the federal provisions, if the states want to receive federal funds. The assent legislation must include a prohibition against the diversion of license fees paid by hunters and fishermen to purposes other than administration of the state fish and wildlife agency. South Dakota's assent legislation is codified in §41-3-4 and §41-3-11 and reads as follows:

§ 41-3-4. The state of South Dakota hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937, (Public Law 415, 75th Congress, 1st session) and the department of game, fish and parks is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the secretary of the interior thereunder; and no moneys

accruing to the state of South Dakota from license fees paid by hunters shall be diverted for any other purpose than the administration of the department of game, fish and parks.

§ 41-3-11. The state of South Dakota hereby assents to the provisions of the act of Congress entitled, "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the department of game, fish and parks is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the secretary of the interior thereunder; and no funds accruing to the state of South Dakota from license fees paid by fishermen shall be diverted for any other purpose than the administration of the department of game, fish and parks and for the protection, propagation, preservation, and investigation of fish and game.

According to the federal rules license revenue includes interest income from license fees; sale, lease, or rental of property

acquired with license revenues; and fees imposed by the state to hunt or fish.

An issue surrounding revenue for the Game, Fish, and Parks fund dealt with how hunting and fishing fees were established. Before 1984, these fees were set by statute. This resulted in a situation where the Legislature set the hunting and fishing license fees while the Game, Fish, and Parks Commission determined how the money was spent. In 1984 the Legislature gave the Game, Fish, and Parks Commission rule-making authority to set the fees for hunting and fishing licenses. Now the Game, Fish, and Parks Commission controls the revenue and expenditure of the money for the Game, Fish, and Parks fund.

The Annual Appropriation

Another issue with the Game, Fish, and Parks fund deals with the statutory annual appropriation. The current statute for the annual appropriation reads as follows:

§ 41-2-35. All moneys in the department of game, fish and parks fund are hereby annually appropriated to be used with any moneys otherwise appropriated to pay the necessary expenses of effectuating the purposes of this title.

The annual appropriation has been in effect since 1909. With this annual appropriation, the Department of Game, Fish, and Parks has the authority to spend money from the Game, Fish, and Parks fund as long as there is money in the fund. Section 41-2-1.3 gives the Game, Fish, and Parks Commission special budgetary functions. Special budgetary functions are defined in §1-32-

1(13) as follows:

"Special budgetary function" is a category of administrative functions and means any statutory power granted to an agency with respect to the receipt, or the approval of budgets or allocations, or the disbursement and expenditure of special revenue funds, capital projects funds, debt service funds, trust and agency funds, public service enterprise funds, and working capital or internal service funds as defined by § 4-4-4. Special budgetary functions are not to be construed, however, to include any authority to select, appoint, promote, or remove any employee.

The following is a simplified description of the budget process for the Game, Fish, and Parks fund. The Department of Game, Fish, and Parks staff prepare a budget request for the Wildlife Division during the summer. The Game, Fish, and Parks Commission approves the budget request at the September or October meeting. The Governor makes a budget recommendation (usually the same as the budget request) in December. The Legislature reviews the budget. Section 41-2-35.1 outlines the Legislature's role in the budget process as follows:

§ 41-2-35.1. Notwithstanding any other provisions of law, all funds received by the department of game, fish and parks shall be set forth in an informational budget as

described in § 4-7-7.2 and be annually reviewed by the Legislature. The provisions of this section shall not operate to cause the loss of control over expenditures of any portion of dedicated revenues received by the department of game, fish and parks.

The Game, Fish, and Parks Commission reapproves the budget at its May meeting. The Game, Fish, and Parks Commission has the authority to make changes to the budget at any of its meetings, even after the budget has been reviewed by the Legislature.

There have been many legislative attempts to remove the annual appropriation of money

in the Game, Fish, and Parks fund and let the Legislature determine the budget. Between 1970 and 1996, there were at least 13 bills introduced to repeal the annual appropriation. None of these bills passed.

Summary

The policy of dedicating hunting and fishing license revenues to enforcing the game laws of South Dakota has been around for nearly 100 years. In order to receive federal funds for fish and wildlife restoration projects, states may not divert hunting and fishing license revenue for any purpose except administration of the state fish and wildlife agency. The annual appropriation of money in the Game, Fish, and Parks fund has been debated during a number of legislative sessions and will likely be debated in future legislative sessions.

This issue memorandum was written by David L. Becker, Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.

Appendix A: Summary of Changes to §41-2-34 - Game, Fish, and Parks Fund

- 1899 Game fund established; revenue from hunting licenses, fines, penalties, and the sale of game, dogs, and guns to county treasury; money expended by board of county commissioners to pay county game warden expenses.
- 1909 Half of the license revenue now deposited in the state treasury game fund and half deposited in the county treasury game fund; all fines deposited in the county treasury game fund; annually appropriated.
- 1913 All license revenue deposited in the state treasury game fund (this eliminated the county game warden system); the fund was renamed the State Fish and Game fund; and used money in the fund for propagation and preservation of fish and game.
- 1915 Used money in State Fish and Game fund to satisfy unpaid warrants against county game funds for county game wardens' salaries.
- 1927 Fund renamed State Game and Fish fund and used 25% of the fund (not to exceed \$25,000) in Custer State Park.
- 1945 Renamed Game, Fish, and Parks fund; eliminated the 25% provision for Custer State Park; used the fund to pay the department's administrative expenses; and consolidated with Park Board Revolving fund.
- 1957 Revenue from the Division of Forestry and Parks and Custer State Park no longer included in the Game, Fish, and Parks fund.