



**House
Legislative
Analysis
Section**

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**REPEAL OF SUNDAY HUNTING
BANS IN CERTAIN COUNTIES**

**House Bill 4011 as enrolled
Public Act 223 of 2003
Sponsor: Rep. Gene DeRossett**

**House Bill 4599 as enrolled
Public Act 224 of 2003**

**Sponsor: Randy Richardville
Committee: Conservation and Outdoor
Recreation**

Third Analysis (12-30-03)

THE APPARENT PROBLEM:

Throughout the 1920's and 1930's (and even as late as 1947), the legislature passed a number of local acts to prohibit Sunday hunting in various counties. Ostensibly, this was done, in part, in order to reduce the noise that resulted from the firearms and dogs used by the hunters for the taking of game. It is believed that these laws would apply to all lands (public and private) in the applicable counties, though courts have held that state-owned land is not subject to these local hunting bans. Accordingly, this dual system has become problematic, especially in those instances where a hunter is tracking a wounded animal and unwittingly crosses from state-owned land onto private property.

Since 1992, the legislature has repealed local acts banning Sunday hunting in seven counties, either through a direct repeal of the local act (Monroe, Livingston, and Shiawassee counties) or through a repeal contingent upon approval of a referendum by voters in the affected county (Sanilac, Lapeer, and Huron counties). Public Act 396 of 1994 (enrolled House Bill 5068) repealed nine local acts banning Sunday hunting contingent upon approval by the voters in each affected county within two years of the act's effective date. Those counties subject to P.A. 396 included Lapeer, Hillsdale, Huron, Lenawee, Macomb, St. Clair, Sanilac, Tuscola, and Washtenaw. Under referendums held pursuant to P.A. 396, the voters of Tuscola, Lenawee, St. Clair, Hillsdale, and Washtenaw counties rejected the repeal of the Sunday hunting ban, while no referendum was held in Macomb County.

While recent legislation repealing the Sunday hunting bans has been contingent upon the approval of voters, no such requirement is constitutionally necessary. During the previous legislative session, Public Act 128 of 2001 (enrolled House Bill 4018) directly repealed the Sunday hunting ban in Macomb County without subjecting the bill to voter approval. Given the fact that there are only a few remaining local acts that prohibit Sunday hunting, it has been suggested that each of them be repealed without conditioning the repeal on the approval of county voters.

THE CONTENT OF THE BILLS:

House Bill 4011 would repeal Local Act 9 of 1927, which prohibits hunting on the lands of another person on Sunday in Washtenaw County.

House Bill 4599 would repeal the following local acts, which ban or restrict hunting on Sunday:

- Local Act 2 of 1927, which prohibits hunting on the lands of another person on Sunday in Tuscola County.
- Local Act 1 of 1931, which prohibits hunting with firearms or dogs on Sunday in Lenawee County.
- Local Act 1 of 1935, which prohibits hunting with firearms or dogs on Sunday in Hillsdale County.
- Local Act 4 of 1939, which prohibits hunting with firearms or dogs on Sunday in St. Clair County, except that it is permissible to hunt waterfowl on the State Clair River or Lake St. Clair.

House Bills 4011 and 4599 (12-30-03)

[Note: Article 4, Section 29 of the state constitution states: *No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.*]

BACKGROUND INFORMATION:

The issue of regulation of hunting by local units of government has been the subject of at least two opinions by the attorney general. In a letter opinion to then-Senator Harry Gast in 1989, then-Attorney General Frank Kelley notes that “a charter township may not, in the absence of express statutory authority, enact an ordinance prohibiting trapping on either public or private land in any circumstance where such trapping is permitted by state statute, but [the] township may prohibit trapping on land owned by the charter township by posting appropriate prohibitory signs on that land.” The opinion was in response to a question by Senator Gast asking whether a charter township may regulate, restrict, or prohibit trapping on public land. Citing *People v. Llewellyn* (1977), the attorney general noted that a municipality is precluded from enacting an ordinance that is in direct conflict with a state statute or if the field of regulation addressed by the ordinance has been preempted by state regulation. The letter opinion notes that the township ordinance prohibiting the trapping on any state lands directly conflicts with the authority of the Natural Resources Commission to regulate the use of state parks and other lands under its jurisdiction. The letter opinion further notes that “[i]n view of the extensive nature of the state regulation of trapping...it is clear that the state regulation is of the type contemplated in the *Llewellyn* case as involving preemption by a state regulatory scheme which has occupied the field of regulation.” This is the reason why Sunday hunting is allowed on state lands even in the remaining counties with Sunday hunting bans.

During the November 1996 election, the voters of Washtenaw County rejected the repeal of the county’s Sunday hunting ban. According to the Washtenaw County Clerk, there were 49,606 votes (45.15 percent) supporting the repeal, and 57,883 votes (53.85 percent) opposing the ban.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills have no fiscal implications for the state or for local governments. (HFA analyses dated 4-3-03 and 6-16-03)

ARGUMENTS:

For:

The few remaining ban still in effect should be repealed for several reasons. First, lifting the ban would clarify that hunters in those counties are free to hunt on public and private land in the county throughout the weekend. According to committee testimony, these hunting bans are not actively enforced, and are only enforced upon the complaint of an individual. This alone suggests that that these bans are not necessary. Second, the fact that state-owned land is not subject to the hunting bans often creates problems as hunters may inadvertently cross into private property (and be in violation of the law) when tracking an animal. In addition, this public-private dichotomy diminishes the apparent effectiveness of the ban, simply because it is not uniformly enforced (assuming it is enforced at all) throughout the county. Further, the bill would repeal the last remaining Sunday hunting bans on the books, and bring about a greater uniformity of hunting laws throughout the state.

In addition, the bills would add another 30 days of hunting in the year, which greatly impacts the local economy. As it stands now, the ban essentially cuts in half the number of hunting days for many hunters in the state. Further, the additional hunting days help keep animal populations in check, which serves to protect farms from crop damage.

Finally, the most compelling argument for repealing the county’s hunting ban is the concern for the property rights of private individuals. The bans in Tuscola County and Washtenaw County prohibit hunting on Sunday on the lands of another individual, while the other local acts generally prohibit Sunday hunting altogether. The Tuscola County and Washtenaw County acts do not provide for an exception for those instances when the landowner grants permission to another person to hunt, nor does it provide an exception for individuals related to the landowner. Under those local acts, only the actual landowner may hunt on his or her land. If a landowner wants to hunt with his or her own children or friends, he or she cannot, because of the hunting ban. More shockingly, the other local acts do not

even permit the actual landowner to hunt on his or her own land. Further, the state has control over its land within the county. Why should private property be any different? It should remain the province of local property owners - rather than an outdated, draconian state law - to determine whether hunting can take place on private land.

Against:

It is interesting to note that the legislature has previously enacted legislation that would repeal the Sunday hunting ban in each of the affected counties. However, in the elections held pursuant to Public Act 396 of 1994, the voters in each of those counties rejected the repeal of the Sunday hunting ban. Considering those results, it is quite clear that the voters of the five counties have expressed their disapproval for any repeal of the hunting ban.

Repealing the hunting ban outright, without any direct input from the voters, may be seen by some as circumventing local control, and further evidence of the legislature's continuing interference in the affairs of local communities. To that end, any attempt to repeal a county's hunting ban should also include another voter referendum. If proponents believe that this is something that has engendered significant approval of county residents, then subjecting the repeal to a referendum will merely confirm that support.

Response:

The state constitution does not require the legislature to submit legislation repealing a local act to the voters of the county affected by the local act. Further, while much has been said about this being an issue of local control, (to reiterate) what about the rights of local property owners to use their land in an otherwise law way, as they see fit?

Analyst: M. Wolf

■ 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.