

**REPEAL OF LOCAL SUNDAY
HUNTING BANS**

**House Bill 4599 as introduced
First Analysis (6-18-03)**

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

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Since 1992, the legislature has repealed local acts banning Sunday hunting in seven counties, either through a direct repeal of the local act (Monroe, Livingston, and Shiawassee counties) or through a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 Public Act 396 of 1994 (enrolled House Bill 5068) repealed nine local acts banning Sunday hunting contingent upon approval by the voters in each affected county within two years of the act's effective date.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 During the previous legislative session, Public Act 128 of 2001 (enrolled House Bill 4018) directly repealed the Sunday hunting ban in Macomb County without subjecting the bill to voter approval.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that there are only a few remaining local acts that prohibit Sunday hunting, it has been suggested that each of them be repealed without conditioning the repeal on the approval of voters.

THE CONTENT OF THE BILL:

The bill 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 St. Clair River or Lake St. Clair.

[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.*]

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state or for local governments. (6-16-03)

ARGUMENTS:

For:

The few remaining hunting bans 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, the hunting bans are not actively enforced, and are only enforced upon the complaint of an individual. This alone suggests that that the 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 a 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, there are several benefits of repealing the ban. First, the bill would add another 30 days of hunting in the year, which is good for the local economy. As it stands now, the ban essentially cuts in half the number of hunting days for many hunters in the state. Secondly, 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 hunting bans is the concern for the property rights of private individuals. The Tuscola County ban prohibits hunting on Sunday on the lands of another individual, while the other local acts generally prohibit hunting on Sunday altogether. The Tuscola County act does 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 that local act, 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 those counties. Why should private property be any different? To that end, it should remain solely the province of local property owners - rather than an outdated, draconian state law - to determine whether hunting can take place on private land.

Response:

The bill should be amended so as to also repeal the Washtenaw County ban contained in Local Act 9 of 1927. (House Bill 4011 contains that repealer.)

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. 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 four 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 the county's hunting ban should also include another voter referendum. If proponents believe that repealing the ban is something that has engendered significant approval by 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 lawful way, as they see fit?

POSITIONS:

The Department of Natural Resources supports the bill. (6-17-03)

The Michigan Coalition for Responsible Gun Owners supports the bill. (6-17-03)

Michigan United Conservation Clubs supports the bill. (6-17-03)

The Hunting Dog Federation supports the bill. (6-17-03)

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.