



**House
Legislative
Analysis
Section**

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LOCAL LIQUOR CONTROL

House Bill 5403 as introduced
First Analysis (5-26-92)

Sponsor: Rep. Alvin Hoekman
Committee: Towns and Counties

THE APPARENT PROBLEM:

Recent court decisions have cast doubt on the authority of local units of government to regulate alcohol usage in their communities, and of state agencies to regulate the possession of alcohol on state-owned land. In 1989, in a case where the defendant was charged with being in possession of an open bottle of beer in a public park, the 58th District Court for the County of Ottawa ruled that a municipal ordinance was invalid if it attempted to regulate with regard to the possession of alcoholic beverages. The court opined that the state had preempted the field, deriving its authority from Article 4, Section 40, of the Michigan Constitution, which provides, in part:

" . . . the legislature may by law establish a liquor control commission, which, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state . . . "

The court went on to note that the commission's authority to regulate alcoholic beverage traffic is contained in the Liquor Control Act, which supersedes all other laws on this subject. (The relevant section of the Liquor Control Act prohibits the consumption of alcoholic beverages, excepting beer and wine, in public parks and "places of amusement" that are not licensed to sell for consumption on the premises. Local ordinances that attempt to prohibit possession, not consumption, of alcohol, or that prohibit beer and wine, have been challenged.)

In 1990, in a case involving the possession of alcohol in Holland State Park, which the Department of Natural Resources (DNR) has prohibited by posted orders, the 58th District Court concurred in the above decision and dismissed the complaint, ruling that the DNR had no authority to control the possession of alcohol in state parks. This decision was affirmed by the Ottawa County Circuit Court in the following year. (Note: In a separate brief, the attorney general and solicitor general added that DNR posted orders on the use and occupancy of

state land were, in any case, invalid, since they weren't promulgated as rules under the Administrative Procedures Act. House Bill 5844 was recently reported out of the House Conservation, Recreation, and Environment Committee to remedy this problem. The bill would amend Public Act 17 of 1921 {the DNR enabling act} to give the director of the department the authority to issue orders to implement promulgated rules, and to make a violation of these orders a misdemeanor.) Since the courts have ruled that control of alcohol usage is subject only to rules enacted under the Liquor Control Act, it is proposed that the statute be amended to establish the legality of regulations enacted by state agencies and local municipalities on the possession and consumption of alcoholic beverages in public places.

THE CONTENT OF THE BILL:

Currently, the Liquor Control Act prohibits consumption of alcoholic liquor, except beer or wine, in public parks or in "places of amusement" that aren't licensed to sell for consumption on the premises. House Bill 5403 would amend the act to permit the consumption of alcoholic liquor in these areas unless prohibited by a county, city, township, village, charter authority, or other public authority, or by a state department or agency.

MCL 436.34

FISCAL IMPLICATIONS:

According to the Department of Natural Resources, the bill has no fiscal implications for the state. (5-22-92)

ARGUMENTS:

For:

The bill would re-establish the Department of Natural Resources' (DNR) authority to enact orders

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restricting alcohol use in state parks, and, similarly, the right of local units of governments to adopt ordinances that would allow them to control the possession and consumption of liquor in public places. In the past, Michigan's beaches and lakes have attracted numbers of young adults, with corresponding problems involving the possession of alcohol. Until bans on alcoholic consumption were strictly enforced, families with children were chased away. Unless the authority to regulate the use of alcohol is restored, those who visit state parks and public areas this summer could once again be confronted with this problem. In addition, since this is the time of the year when high school graduations take place, it is particularly important that control of alcoholic beverages be enforced.

Against:

As written, the bill would seem to permit the consumption of alcoholic liquor in public parks and public places of amusement -- areas where the consumption of alcohol was formerly prohibited -- unless every local government acts to prohibit this by ordinance. In addition, the bill makes no provision for situations where there is an overlapping of jurisdiction over public areas. For example, some lakes in state parks are under the control of the DNR. However, the public access sites for boaters on these lakes are often leased by the county, and may be covered by an ordinance that prohibits the possession of alcohol. In an area where DNR regulations permitted the consumption of alcohol on a lake, but county regulations prohibited the possession of alcohol in the county park, might not a situation arise where boaters could be arrested by the county enforcement agency for transporting alcohol from their boats to their cars in the county parking lot?

Response:

It is intended that a substitute bill will be introduced on the House floor to rectify these problems. The substitute bill would clarify that no alcoholic liquor could be possessed or consumed in public areas that weren't licensed to sell liquor. The bill would also contain a provision specifying that ordinances pertaining to land that was leased from a state agency would be subject to that agency's approval.

POSITIONS:

The Michigan Townships Association supports the bill, provided that it be amended to include the provisions in the proposed substitute bill (see *Response*, above). (5-22-92)

The Michigan Municipal League supports the bill. (5-21-92)

The Department of Natural Resources does not support the bill unless substituted (see *Response*, above). (5-21-92)

The Michigan Council on Alcohol Problems (MICAP) supports the bill. (5-22-91)