

MACOMB SUNDAY HUNTING

House Bill 4018 as introduced First Analysis (2-27-01)

Sponsor: Rep. Sal Rocca
**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Under state law, all wild birds and wild mammals in the state are the property of the people of the state, and their “taking” is regulated by the Department of Natural Resources as provided by law. Consequently, when counties wanted to prohibit hunting on Sundays, they had to do this by having the state legislature pass “local acts” for the county in question. At one time, at least thirteen counties banned Sunday hunting in one form or another. Most of the local acts banning Sunday hunting were passed in the 1920s and 1930s, but Macomb County’s local act (apparently the last local act passed to ban Sunday hunting) was passed in 1947. (See BACKGROUND INFORMATION.) Since 1992, the state legislature has repealed local acts banning Sunday hunting in six counties, sometimes by simply repealing the local act applying to the county (Monroe, Livingston, and Shiawasee counties), and sometimes repealing the local act contingent on approval of a referendum by voters in the county (Sanilac, Lapeer, and Huron counties).

Public Act 396 of 1994 made the repeal of nine local acts banning Sunday hunting contingent on approval of the repeal by the voters of the counties involved within two years of the public act’s effective date. By the December 29, 1996, deadline, three counties (Sanilac, Lapeer, and Huron) approved the repeal by referendum, five counties (Tuscola, Washtenaw, Lenawee, St. Clair, and Hillsdale) rejected the repeal, and Macomb County did not hold a referendum on the repeal.

Legislation to repeal the Sunday hunting ban in Macomb County was unsuccessful in the past two legislative sessions, and has again been introduced.

THE CONTENT OF THE BILL:

Currently, Local Act 9 of 1947 prohibits hunting game on Sundays in Macomb County. The bill would repeal the local act, and, therefore, the ban on Sunday hunting in Macomb County.

BACKGROUND INFORMATION:

“Local” versus “public” acts. The state conveys authority to local units of government primarily through acts (“enacted” bills, which also are known as laws or statutes) of the state legislature, enabling or requiring local units of government to act in certain ways. These acts of the legislature may be either general (or “public”) acts or “local” (or special) acts.

Enabling or permissive laws do not require local units of government to act in specific ways. Instead, they allow local officials to act in these ways if they so desire. However, “enabling” laws or statutes often do prescribe how a local unit of government will proceed once it decides to use the power granted in the enabling act. Land use zoning is an example of this kind of enabling act. State law does not require that local units of government adopt zoning ordinances, but once a local unit of government decides to do so, state law imposes certain conditions on implementation of the exercise of this power, such as requiring that proper public notice be given, a zoning board be created, and an appeals process be available. Other state laws require or mandate that local units of government exercise certain powers, though the granting of these powers in statute may be very broad (such as providing for the general health and welfare of the public) or very specific (such as laws governing uniform accounting and budgeting procedures).

In contrast to these general or “public acts,” the legislature also is able to pass “local” or “special” acts, that is, laws that apply only to a specifically named township, city, or county, and to no other. Prior to the successful push of reformers in the early 1900s for municipal “home rule,” the use of local acts to convey powers to local units of government was widely used and sometimes abused. Usually, local officials asked their state representative or senator to introduce a “local” bill, and the legislature would routinely pass it. If enacted (that is, signed by the governor), the local bill would become a local act. In this way, the legislature maintained control over

the local units of government while the local unit of government got what it wanted. However, because a legislator could be the “gatekeeper” for local bills affecting his or her legislative district, some legislators abused this power by introducing -- for personal or political reasons (such as wanting to embarrass a political enemy back home or obtaining a job for a relative) -- local bills that local officials did not want or ask for. Reportedly, city governments and city officials were especially subject to this kind of unwanted legislative interference, and this was one of the main reasons why reformers of the early 1900s pushed successfully, in many states, for municipal “home rule,” that is, the idea that local units of government should have a general grant of authority to draft their own charters, free of state legislative influence. In Michigan, the 1908 state constitution reflected this reformist pressure by directing the legislature to adopt a home rule law for cities and villages. The 1908 constitution further specified that the legislature could pass local bills only by a two-thirds vote in each house and that a local bill would be subject to a referendum in the local unit of government.

Article IV, Section 29 of the 1963 Michigan constitution now states, in part, that the legislature shall pass no local or special act where a general (“public”) act can be made applicable. This section of the 1963 constitution also preserves the earlier constitutional requirement that a local or special act cannot take effect “until approved by two-thirds of the members elected and serving in each house and by a majority of the electors voting thereon in the district affected.” However, the repeal of a local act requires only a majority vote by legislators in both houses, and does not require submission to the electors of the local district in question.

The use of local acts declined during the twentieth century, and they are rarely used anymore. For example, in the two decades from 1928 to 1948, there were 98 local acts. Almost half of this number -- 43 -- were passed in two years alone: 11 local acts in 1931 and 32 local acts in 1945. In some years, during those two decades and since, no local acts were passed. The most recent local act, an amendment to Local Act 4 of 1929 (which bans Sunday hunting in Sanilac County), was passed in 1989. None have been passed since then (with one apparent exception, in which a local act was passed but was given a public act number instead of a local act number). Instead of relying on local acts, the legislature has moved, instead, to using what sometimes are called “general-local” acts, that is, public acts that apply only to local units of government of a certain size specified

generally in the act. For example, initially the charter township act applied only to townships with a population over 5,000, and, until relatively recently, legislation passed only for the city of Detroit carried the words “all cities over 1,000,000 in population.”

Local acts banning Sunday hunting. Mostly during the 1920s and 1930s but as late as 1947, the legislature passed a number of local acts to prohibit Sunday hunting in various counties. Reportedly, many, if not most, of these local acts originally were passed to prohibit hunting game with firearms or dogs to forestall the noise from guns and dogs in these counties from hunters travelling to these counties from the more populous southeast area of the state. As recently as 1994 (according to a DNR analysis of House Bill 5068 dated January 10, 1994), thirteen of the state’s 83 counties had a ban on Sunday hunting, but legislation in the 1991-92 legislative session and again in the 1993-94 legislative session resulted in the repeal of Sunday hunting bans in six of the thirteen counties.

Three public acts in 1992 (Public Acts 114, 241, and 242) repealed outright three local acts that prohibited Sunday hunting in Monroe, Shiawassee, and Livingston counties, without requiring a local referendum on the proposed repeals. Public Act 396 of 1994 repealed nine local acts prohibiting Sunday hunting in nine counties on the condition that the repeal were submitted to a vote within two years of the public act’s effective date (the deadline was December 29, 1996) and that the repeal were ratified by a majority of the electors in the county. Voters in Sanilac, Lapeer, and Huron counties ratified the repeal of their local acts proposed in Public Act 396, while voters in Tuscola, Washtenaw, Lenawee, St. Clair, and Hillsdale counties rejected the repeal of their local acts. Macomb County did not submit the question to its voters within the two-year time limit. Consequently, bans on Sunday hunting continue in Macomb, Tuscola, Washtenaw, Lenawee, St. Clair, and Hillsdale counties.

In the last two legislative sessions, legislation has been introduced to repeal the ban on Sunday hunting in Macomb County. Some of the legislation, either as introduced or as substituted, would have repealed Local Act 9 of 1947 (the local act prohibiting Sunday hunting in Macomb County) without a local referendum on the repeal; some would have repealed the Sunday ban only if ratified by voters in Macomb County. Some of the legislation not only would have repealed the Sunday hunting ban in Macomb County, but would have overturned the voters’ rejection of the repeal of their counties’ ban allowed by Public Act

396 of 1994. For example, in the 1997-98 legislative session, House Bill 5547, as introduced, would have repealed the ban in Macomb County if the repeal were ratified by the voters of Macomb County; the substitute, which would simply have repealed the local act, was not adopted. In contrast Senate Bill 1021, as introduced, would have repealed outright the bans on Sunday hunting in Hillsdale, Lenawee, Macomb, St. Clair, Tuscola, and Washtenaw counties; as amended by the House and Senate, it would have repealed the ban only in Macomb County and only with the approval of the Macomb County voters. Similarly, in the 1999-2000 legislative session, House Bill 4086, as introduced, would have repealed outright the local act banning Sunday hunting in Macomb County; the substitute, which would have required a county referendum on the repeal, was not adopted. As introduced, both Senate Bill 186 and House Bill 4665 would have repealed outright the local acts banning Sunday hunting not only in Macomb County, but in the five counties (Hillsdale, Lenawee, St. Clair, Tuscola, and Washtenaw) that had rejected the repeal of their local acts under Public Act 396 of 1994. As passed by the Senate, Senate Bill 186 was substituted to simply repeal Macomb County's local act banning Sunday hunting, but died in the House.

Twelve counties that had local acts banning Sunday hunting, and the public acts repealing (or allowing for the repeal of) these local acts are as follows. (An asterisk indicates a current Sunday hunting ban in these counties.)

-*Tuscola: (Local Act 2 of 1927), referendum under Public Act 396 of 1994 defeated

-Livingston: Local Act 6 of 1927 repealed by Public Act 241 of 1992

-Lapeer: Local Act 7 of 1927 repealed by referendum under Public Act 396 of 1994

-*Washtenaw: (Local Act 9 of 1927), referendum under Public Act 396 of 1994 defeated

- Sanilac: Local Act 4 of 1929 repealed by referendum under Public Act 396 of 1994

-*Lenawee: (Local Act 1 of 1931), referendum under Public Act 396 of 1994 defeated

- Monroe: Local Act 3 of 1931 repealed by Public Act 114 of 1992

-*Hillsdale: (Local Act 1 of 1935), referendum under Public Act 396 of 1994 defeated

- Shiawasee: Local Act 1 of 1937 repealed by Public Act 242 of 1992

- Huron: Local Act 3 of 1937 repealed by referendum under Public Act 396 of 1994

- *St. Clair: (Local Act 4 of 1939), referendum under Public Act 396 of 1994 defeated

-*Macomb: (Local Act 9 of 1947), no referendum held under Public Act 396 of 1994

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have fiscal implications. (3-1-99)

ARGUMENTS:

For:

The bill would repeal outright Local Act 9 of 1947, which bans Sunday hunting in Macomb County. Public Act 114 of 1992 allowed for the repeal of the same local act but required a county referendum to ratify the proposed repeal. The county chose not to hold a referendum on the repeal, but still wishes to have the local act repealed by the legislature, which is what the bill would do. Many hunters also consider such local acts antiquated and unnecessary, and argue that all such local acts should be repealed because it does not make sense to them to have people in six counties treated differently than people in the 77 other Michigan counties that do not have Sunday hunting bans. (For example, when state deer season opens on a Sunday, the six counties with Sunday hunting bans force hunters to wait until the following Monday to begin hunting.) Moreover, hunting groups argue, at a time when there is an overabundance of deer and Canada Geese, hunting opportunities should be maximized, rather than restricted.

Response:

Hunting can become complicated in areas where county lines cut across hunting areas and where some counties ban Sunday hunting while others don't. For example, St. Clair County, which borders on Macomb County, kept its hunting ban, which means that repealing the Sunday hunting ban in Macomb County could result in conflicts where hunting areas lie close to, or cross, the county line. This situation would be similar to that currently existing in Tuscola County, which borders on Huron, Lapeer, and Sanilac counties, all of which ratified the repeal of

their Sunday hunting bans while Tuscola County rejected the repeal of its ban. (See BACKGROUND INFORMATION.) As a result, Tuscola County is surrounded by three other counties where Sunday hunting is permitted.

Reply:

This confusing situation is all the more reason, many people would argue, why all such Sunday hunting bans should be repealed, and should be repealed by the state legislature without an option for local referenda. The state constitution does not require a referendum on the repeal of local acts (though it does require local referenda on accepting local acts passed by the state legislature), and requires only a simple majority vote of both houses of the legislature to repeal local acts. Local acts are an outdated way of providing for local control of issues, as is evidenced by the fact that the last time the legislature passed a local act was twelve years ago (and in that case, was an amendment to an existing local act prohibiting Sunday hunting in Sanilac County). It is time to do away with local acts prohibiting Sunday hunting.

For:

By repealing the local act, the bill would clarify that hunters were free to pursue their sport legally all weekend, and on private as well as public land. Local acts prohibiting Sunday hunting apparently originally were intended to apply to hunting on both public and private lands, but reportedly the enforcement of local laws banning Sunday hunting has decreased as Sunday hunting has come to be generally accepted. Today, few people probably even realize that such laws exist, and to impose criminal sanctions on them for violating such laws (for example, violation of Macomb County's local act is a misdemeanor punishable by a fine of up to \$100 and jail for up to 90 days) seems ludicrous. Repealing the local act would simply strike from the books a law that most local citizens already consider to be obsolete.

Response:

It is specious to argue that hunters aren't aware of these laws. Current hunting regulations are outlined in the Hunting and Trapping Guide issued annually by the Department of Natural Resources' (DNR) Wildlife Division, which is available to all who purchase hunting licenses at the various authorized retail outlets, and the specific prohibitions regarding Sunday hunting in each of the six counties with current Sunday hunting restrictions are listed under "Sunday Hunting Closures."

Against:

Given that five of the eight counties that held a referendum under Public Act 114 of 1992 on the

repeal of their local acts banning Sunday hunting chose to keep their bans, shouldn't the voters in Macomb County at least be given the opportunity to decide for themselves whether or not to repeal their current ban on Sunday hunting? A local referendum on any such repeal takes on even more importance in the light of reports that citizens in the southern, heavily populated part of the county, apparently oppose such a repeal, though citizens in the more sparsely populated northern part of the county apparently support such an appeal. Given this apparent disagreement among the citizens of the county, the fair way to decide this issue would be to allow the county voters to decide by a majority vote, which is what Public Act 396 of 1994 allowed.

POSITIONS:

The Department of Natural Resources supports the bill. (2-22-01)

The Michigan United Conservation Clubs (MUCC) supports the bill. (2-22-01)

The Macomb County Board of Commissioners adopted a resolution in support of similar legislation in 1998.

The National Rifle Association of America (NRA) submitted written testimony in support of similar legislation last session.

Analyst: S. Ekstrom

■ 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.