

Legislative Analysis



REPEAL PROHIBITION ON LOCAL UNITS OF GOVERNMENT BANNING PLASTIC BAGS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4359 (H-1) as reported from committee
Sponsor: Rep. Felicia Brabec
**Committee: Natural Resources, Environment, Tourism
and Outdoor Recreation**
Complete to 11-9-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4359 would amend section 1 of 2016 PA 389,¹ an act that preempts local ordinances regulating the use, disposition, or sale of, prohibiting or restricting, or imposing any fee, charge, or tax on certain containers, to amend the definition of *auxiliary container* so that it no longer includes a *bag*.

Presently, an *auxiliary container* is defined in law as a *bag*, cup, bottle, or other packaging, whether reusable or single-use, that meets both of the following requirements:

- Made of cloth, paper, plastic, cardboard, corrugated material, aluminum, glass, postconsumer recycled material, or similar material or substrates, including coated, laminated, or multilayer substrates.
- It is designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.

Under the act, a local unit of government is prohibited from adopting or enforcing an ordinance that does any of the following:

- Regulates the use, disposition, or sale of auxiliary containers.
- Prohibits or restricts auxiliary containers.
- Imposes a fee, charge, or tax on auxiliary containers.

Excluding a bag from this definition, as the bill would do, would have the effect of allowing local units of government to enact ordinances that, with regard to bags, address any or all of those aspects, in accordance with other state laws. Any such ordinance that was passed before 2016 PA 389 took effect could be enforced by the municipality that enacted it.

MCL 445.591

BACKGROUND:

In 2016, the Washtenaw County Commission voted to levy a 10-cent tax on plastic bags.² From the amount collected, 80% was to go to promoting recycling in accordance with the county's solid waste management program and the other 20% to grocers to help inform consumers of the fee. Those enrolled in food assistance programs (such as WIC) were exempted from the

¹ HFA summary of the act: <https://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-0853-C062BF2E.pdf>

² <https://www.mlive.com/news/ann-arbor/2016/06/10-cent-bag-tax-at-washtenaw-c.html>

fee. The stated rationale was to incentivize the reduction of single-use bags, which the county noted were responsible for approximately \$200,000 in added clean-up costs to remove discarded bags from public areas. No other local unit of government had enacted a similar ordinance at the time 2016 PA 389 was enacted, and no local unit of government in the state is known to have a local ordinance that addresses the use of single-use food containers that fall within the definition of an auxiliary container.

Nationwide, 10 states and several hundred municipalities, including large cities such as New York City and Chicago, have implemented bans on the use of single-use plastic bags or added fees collected by retailers if the customer requests a single-use bag. Conversely, Michigan is presently one of 18 states have laws that preempt municipalities within their respective borders from enacting their own bag policy or ordinance.

BRIEF DISCUSSION:

Supporters of the bill say that it will restore local control over an issue that has varying impact by region. In more densely populated areas, the accumulation of single-use bags in public areas is a greater issue than in rural areas, and municipalities may wish to enact ordinances to combat single-use bag trash. Of additional concern are the potential hazards associated with microplastics leeching into water, which occurs as plastic bags slowly break down.

Opponents of the bill say it will have an adverse impact on consumers, particularly those with low household incomes, who will now have to pay increased costs to purchase necessary goods such as groceries. Additionally, trade associations oppose the bill because they say allowing individual local units of government to enact unique ordinances will lead to a tougher regulatory landscape for retailers to navigate.

FISCAL IMPACT:

House Bill 4359 would have no impact on state government and an indeterminate fiscal impact on local units of government that chose to enact an ordinance currently prohibited under the act. By repealing the act, a local unit of government would be permitted to adopt an ordinance that regulates and/or imposes fees, charges, or taxes on auxiliary containers. Any estimate of regulatory costs or revenues from a fee, charge, or tax would depend on the scope and structure of the ordinance adopted by a local unit of government and cannot be estimated at this time.

POSITIONS:

Representatives of the following entities testified in support of the bill (9-28-23):

- City of Ann Arbor
- Sierra Club of Michigan
- Michigan League of Conservation Voters
- Michigan Environmental Council

The following entities indicated support for the bill:

- Southeast Michigan Council of Governments (9-28-23)
- Upper Peninsula Environmental Council (9-28-23)
- Michigan Townships Association (9-28-23)

- Humane Society of the United States (9-28-23)
- For Love of Water (11-9-23)
- Michigan Municipal League (11-9-23)
- Clean Water Action (11-9-23)

Representatives of the following entities testified in opposition to the bill:

- American Recyclable Plastic Bag Alliance (9-28-23, 11-9-23)
- Michigan Restaurant and Lodging Association (9-28-23)
- Michigan Retailers Association (9-28-23)
- Michigan Manufacturers Association (9-28-23)
- Dart Container Company (9-28-23)

The following entities indicated opposition to the bill:

- Midwest Independent Retailers Association (9-28-23)
- American Forest and Paper Association (9-27-23)
- Pactiv Evergreen (9-28-23)
- Small Business Association of Michigan (9-28-23)
- Grand Rapids Chamber (9-28-23)
- Plastics industry Association (9-28-23)
- Michigan Chemistry Council (9-28-23)
- Consumer Health Products Association (9-28-23)
- Blue Triton Brands (9-28-23)
- Home Depot (11-9-23)
- Huhtamaki (11-9-23)
- Foodservice Packaging Institute (11-9-23)
- Dow Chemical Company (11-9-23)
- National Federation of Independent Business (11-9-23)
- Michigan Soft Drink Association (11-9-23)
- Mackinac Center for Public Policy (11-9-23)
- Michigan Chamber of Commerce (11-9-23)
- American Petroleum Institute (11-9-23)
- Michigan Petroleum Association (11-9-23)
- Michigan Association of Convenience Stores (11-9-23)

Legislative Analyst: Josh Roesner
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.