



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [Sub. S.B. 116 of the 130th G.A.](#)

**Date:** December 5, 2014

**Status:** As Passed by the Senate

**Sponsor:** Sen. Kearney

**Local Impact Statement Procedure Required:** No

**Contents:** Permits the creation of outdoor refreshment areas and exempts persons within the districts from the open container law

### State Fiscal Highlights

- This bill permits the creation of outdoor refreshment areas, allowing for the consumption of beer and spirituous liquor at outdoor locations within the districts. There are 46 municipal corporations and townships in Ohio with a population of at least 35,000 that could approve these districts. The Division of Liquor Control within the Department of Commerce could then designate certain liquor permit holders within the districts as authorized to conduct outdoor liquor sales and open container consumption.
- This may result in additional liquor permit applications and issuances by the Division of Liquor Control. Liquor permit fees are collected by the Division of Liquor Control and deposited into the Undivided Liquor Permit Fund (Fund 7066), and then distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control (45%), the local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%).
- In addition, the Division of Liquor Control charges \$100 for new permanent permit applications, deposited into the Liquor Control Fund (Fund 7043).
- The bill increases appropriations to the Tourism Fund (Fund 5MJ0) appropriation item 195683, TourismOhio Administration, by \$500,000 in FY 2015 and earmarks this amount to support the Major League Baseball All-Star Game in Cincinnati.

### Local Fiscal Highlights

- If any of the 46 eligible Ohio municipal corporations and townships approve the creation of outdoor refreshment areas, it would likely result in increased costs for local law enforcement to ensure that consumption is confined to the district, and increase patrolling and monitoring activity within and around the area. However, the legislative authority of the municipal corporation or township must approve the

application for a district after recommendation by the mayor, making the fiscal effects on these municipal corporations and townships permissive.

- The bill allows the municipal corporations and townships to charge a fee for outdoor refreshment area applications. Presumably, these fees would offset the costs for reviewing and acting upon outdoor refreshment areas applications.
- Municipal corporations and townships receive a portion of liquor permit fee revenue collected by the Division of Liquor Control. The issuance of additional liquor permits for establishments in outdoor refreshment areas would result in a gain in liquor permit revenue for the municipal corporation or township where the liquor permit is issued.

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## Detailed Fiscal Analysis

### Background on open container law

Generally, under current law a person is prohibited from carrying an open container of beer or liquor in any public place. However, certain exceptions of the law exist, most often for festivals and other temporary events held in streets and parks.

Under the bill, a person who purchases beer or intoxicating liquor from the holder of a permit with an outdoor refreshment area designation is permitted to have that beverage in an open container at any outdoor location within the outdoor refreshment area. However, no person may enter the premises of another establishment with an open container of beer or intoxicating liquor purchased elsewhere.

### Outdoor refreshment areas

The bill allows for the creation of "outdoor refreshment areas" (ORAs) within municipal corporations or townships with a population of greater than 35,000. The districts may be up to a half-mile by half-mile in area, and the area must include at least four A-1, A-1-A, A-1c, A-2, or D liquor permit holders. There are many types of D permits, but the vast majority of these permits are issued for restaurants and bars for on-premises consumption of alcohol. The eligible A permit holders are manufacturers of beer or wine. Currently, there are approximately 38,000 D and 998 A-1, A-1-A, A-1c, or A-2 liquor permits issued by the Division of Liquor Control (DOLC) within the Department of Commerce. The bill exempts people from the open container law when inside the districts. There are two primary steps that must be taken to fully allow for this exemption within the ORAs: (1) the municipal corporation or township must approve the district, and (2) DOLC must then designate the businesses that are ORA-eligible for open container consumption.

Overall, if any of the 46 municipal corporations and townships that are eligible to create ORAs choose to approve an ORA, the municipal corporation or township could incur new costs for enforcing the open container and ORA law; however, the costs

would at least be partially offset by additional liquor permit revenue. On the state level, the bill would presumably result in a minimal increase in administrative costs to DOLC, although there will also be a small increase in liquor permit fee revenue likely to be received as a result of the bill.

### **Effects on 46 Ohio municipal corporations and townships eligible for ORAs**

To qualify for an ORA, the legislative authority of the municipal corporation or township must approve the application after recommendation by the mayor or township fiscal officer. This means that the fiscal effect on municipal corporations and townships is permissive. Overall, there are 46 municipal corporations and townships in Ohio that would qualify for ORAs given the minimum population threshold under the bill. However, the bill specifies three population tiers, thus restricting the number of ORAs that may be created per municipal corporation or township under each tier. The table below provides a breakdown of the number of Ohio municipal corporations and townships that would be able to create ORAs by tier. In total, under the bill, 46 Ohio municipal corporations and townships could create a maximum of 55 ORAs across the state.<sup>1</sup>

<b>Number of Ohio municipal corporations and townships by population greater than 35,000</b>	
<b>Population Tier</b>	<b>Number of Municipal Corporations and Townships</b>
Tier 1: Population 35,001-150,000 – allowed one ORA per municipal corporation or township	41
Tier 2: Population 150,001-275,000 – allowed two ORAs per municipal corporation or township	1
Tier 3: Population 275,001 or more – allowed three ORAs per municipal corporation or township	4
<b>TOTAL</b>	<b>46</b>

\*Population figures are based on the 2010 U.S. Census.

Municipal corporations and townships that approve ORAs are likely to see increased expenses for overseeing compliance with the ORA law and providing additional law enforcement in and around designated ORAs. The bill allows municipal corporations and townships to charge a fee for ORA applications. Presumably, these fees would offset the costs for reviewing and acting upon ORA applications. It is also possible that there could be more people prosecuted for open container violations if individuals leave the ORA boundaries with an open container. If this occurs, adjudication costs for counties and municipalities could increase. These costs would be at least partially offset by revenue from (1) any new liquor permits that could be issued as a result of the new ORAs, and (2) more citations being issued for open container

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<sup>1</sup> The bill states that the population thresholds are determined by the most recent federal census, so other municipal corporations or townships may be newly eligible for ORA creations after the 2020 U.S. Census and beyond.

violations. The municipal corporation or township where a new permit is issued receives 35% of the permit revenue that was paid to DOLC.

### **Effects on the Division of Liquor Control**

DOLC may incur a minimal increase in costs to administer the bill's provisions. It is unclear whether the bill allows for DOLC to charge a supplementary fee when determining whether A-1, A-1-A, A-1c, A-2, and D permit holders may be designated as businesses that are eligible for the open container consumption exemption.

Even if DOLC does not charge an additional fee for the ORA designation for permit holders, any costs incurred would likely be mostly offset by new liquor permit fee revenue deposited into Fund 7066 as a result of an increase in A-1, A-1-A, A-1c, A-2, and D permit issuances. The annual fees for these permits range from \$76 to \$2,344. New permit fee revenue received would be subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by DOLC, which receives 45% of the permit fee revenue, the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%), as well as the local taxing district where the permits are issued (35%). All permanent liquor permits, in addition to the stated fee, carry a \$100 processing fee that covers DOLC's expenses in fingerprinting and making background checks for permanent license applications. This fee is deposited into the Liquor Control Fund (Fund 7043).

### **Outdoor Refreshment Area Study Committee**

The bill also creates a seven-member Outdoor Refreshment Area Study Committee, consisting of four members of the General Assembly, a county commissioner, a representative of a municipality or township with a population of 35,000 or less, and a person from the Division of Liquor Control. Their task would be to study the feasibility of allowing municipalities or townships with populations under 35,000 to create outdoor refreshment areas and issue a report to the General Assembly by May 1, 2015. The bill specifies that the members of the study committee would serve without compensation for their participation.

### **Earmark for Major League Baseball All-Star Game in Cincinnati**

Lastly, the bill increases appropriations to the Tourism Fund (Fund 5MJ0) appropriation item 195683, TourismOhio Administration, by \$500,000 in FY 2015 and earmarks the same amount in FY 2015 to support the Major League Baseball All-Star Game in Cincinnati. The game will be played on July 14, 2015; however, the midseason break is six days long and other MLB-related festivities and events will be hosted in the Cincinnati area leading up to the game. The current FY 2015 appropriation is \$8.0 million, used to support the Office of TourismOhio in promoting the state as a travel and tourism destination.

## **Background on funding for tourism promotion**

S.B. 314 of the 129th General Assembly created the Office of TourismOhio under the Development Services Agency (DSA), succeeding the Tourism Division. The bill also established a new pilot funding strategy to run from FY 2014 to FY 2018 that is based on the growth in sales tax revenue received from certain tourism-related industries. During this five-year period, up to \$10.0 million in sales tax proceeds credited to the GRF may be transferred to Fund 5MJ0. The \$10.0 million cap includes an annual inflation adjustment based on the Consumer Price Index – all urban consumers, Midwest region. DSA anticipates that sales tax revenue from these industries will consistently increase throughout the duration of the pilot program and beyond. The funds will pay for payroll and operating costs of the Office, as well as marketing, advertising, public relations, and the development and publication of tourism materials. Fund 5MJ0 appropriation item 195683, TourismOhio Administration, received an appropriation of \$8.0 million in FY 2014 for these purposes.

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