



# Ohio Legislative Service Commission

Shannon Pleiman

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 47 of the 131st G.A.

**Date:** March 3, 2015

**Status:** As Introduced

**Sponsor:** Reps. Blessing and Driehaus

**Local Impact Statement Procedure Required:** No

**Contents:** Permits the creation of outdoor refreshment areas and exempts persons within the area from the open container law and declares an emergency

### State Fiscal Highlights

- The bill permits the creation of outdoor refreshment areas, allowing for the consumption of beer and spirituous liquor at outdoor locations within the designated areas. There are 79 municipal corporations and townships in Ohio with a population of at least 25,000 that could approve these areas.
- If any of the eligible municipal corporations or townships creates an outdoor refreshment area, the Division of Liquor Control within the Department of Commerce must issue an outdoor refreshment area designation to certain liquor permit holders located within the area.
- 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 Mental Health and Addiction Services (20%).

### Local Fiscal Highlights

- If any of the 79 eligible Ohio municipal corporations and townships approve the creation of outdoor refreshment areas, there could be increased costs for local law enforcement to ensure that consumption is confined to the area. However, the legislative authority of the municipal corporation or township must approve the application for an area after recommendation by the executive director or fiscal officer, making the fiscal effects on these municipal corporations and townships permissive.

- 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" within municipal corporations or townships with a population of greater than 25,000. The areas may be up to 320 contiguous acres or one-half of a square mile, 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 474 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 areas. There are two primary steps that must be taken to fully allow for this exemption within the outdoor refreshment areas: (1) the municipal corporation or township must approve the area, and (2) DOLC must then designate the businesses that are eligible.

Overall, if any of the 79 municipal corporations and townships that are eligible to create outdoor refreshment areas choose to approve an outdoor refreshment area, the municipal corporation or township could incur new costs for enforcing the open container 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 municipal corporations and townships

To establish an outdoor refreshment area, the executive director of a municipal corporation or the fiscal officer of a township must file an application with the legislative authority of the municipal corporation or township in which the outdoor refreshment area will be created. The legislative authority must approve the application by ordinance or resolution. This means that the fiscal effect on municipal corporations and townships is permissive.

Overall, there are 79 municipal corporations and townships in Ohio that would qualify for outdoor refreshment areas given the minimum population threshold under the bill. However, the bill specifies three population tiers, thus restricting the number of outdoor refreshment areas 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 these designated outdoor drinking areas by tier. In total, under the bill, 79 Ohio municipal corporations and townships could create a maximum of 88 outdoor drinking areas across the state.<sup>1</sup>

<b>Number of Ohio Municipal Corporations or Townships by Population Greater Than 25,000</b>	
<b>Population Tier</b>	<b>Number of Municipal Corporations or Townships</b>
Tier 1: Population 25,001-150,000 – allowed one outdoor refreshment area per municipal corporation or township	74
Tier 2: Population 150,001-275,000 – allowed two outdoor refreshment areas per municipal corporation or township	1
Tier 3: Population 275,001 or more – allowed three outdoor refreshment areas per municipal corporation or township	4
<b>TOTAL</b>	<b>79</b>

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

Municipal corporations and townships that approve outdoor refreshment areas are likely to see increased expenses for overseeing compliance with the outdoor refreshment area law and providing additional law enforcement in and around designated outdoor refreshment areas. It is possible that there could be more people prosecuted for open container violations if individuals leave the outdoor refreshment area 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 outdoor refreshment areas, and (2) more citations being issued for open container violations. The municipal corporation or township where a new permit is issued receives 35% of the permit revenue that was paid to DOLC.

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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 after the 2020 U.S. Census and beyond.

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

DOLC may incur a minimal increase in costs to administer the bill's provisions. The bill does not allow 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. Presumably, 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 the number of issuances among these five permit types. 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 Mental Health and Addiction Services (20%), as well as the local taxing district where the permits are issued (35%).

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