

Legislative Analysis



ALLOW ORV ORDINANCES IN ALL COUNTIES

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House Bill 4299 (Substitute H-1)

Sponsor: Rep. Jon Bumstead

Committee: Tourism

First Analysis (5-15-13)

BRIEF SUMMARY: The bill allow for the adoption of ordinances allowing ORVs to operate on the side of certain maintained roads in all counties in the state. Currently, the only counties eligible to adopt such ordinances are Oceana, Newaygo, Montcalm, Gratiot, Saginaw, Tuscola, Sanilac, and the counties lying north of those counties, including all of the counties in the Upper Peninsula, and St. Clair County.

FISCAL IMPACT: The bill would have no significant fiscal impact on the Department of Natural Resources. The bill would have an indeterminate fiscal impact on local units of government that may choose to adopt an ordinance that would allow the operation of ORVs on roads within their jurisdictions.

The amount of potential fiscal impact would depend upon any increased enforcement costs that a local government might incur under the bill's provisions and any potential change in fine revenue that it might receive from violations of the ORV ordinance.

The statute provides that local governments may adopt an ordinance that requires a fine of up to \$500 for violations of that ordinance. The fines would be collected by the local government and distributed as follows: fifty percent to the county sheriff or police department that is responsible for ORV enforcement and training, and fifty percent to the County Road Commission or the department within a city or village that is responsible for street maintenance.

THE APPARENT PROBLEM:

Public Act 240 of 2008 amended Part 811 (Off-Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act (NREPA) to allow certain counties, including local governmental units within eligible counties, to adopt ordinances allowing ORVs to be operated on the shoulder of certain roads. Subsequently, Public Acts 175 of 2009 and 107 of 2011 expanded the act to cover more counties.

Proponents suggest that yet another expansion, allowing the adoption of such ordinances in all counties in the state, will encourage greater participation in the fast-growing recreational activity of ORV use and boost tourism.

THE CONTENT OF THE BILL:

Currently, Part 811 allows the county board of commissioners of an eligible county, the township board of a township located within an eligible county, and the legislative body of a municipality located within an eligible county, to adopt an ordinance authorizing the use of ORVs on the maintained portion of one or more roads located within their respective jurisdictions. All county primary and local roads, or city major and local streets, would be eligible for such a designation, as determined by the appropriate local legislative body.

Under the act, the only counties currently eligible to adopt such ordinances are Oceana, Newaygo, Montcalm, Gratiot, Saginaw, Tuscola, Sanilac, or a county lying north of those counties, including all of the counties in the Upper Peninsula, and St. Clair County.

Specifically, House Bill 4299 (H-1) would eliminate reference to "eligible counties," therefore making it possible for all counties in the state to adopt such an ordinance.

Currently, a public hearing must be held before a township or municipality can adopt such an ordinance and the respective township clerk must provide notice of the hearing to the county road commission. The bill would include municipal clerks in that requirement, and also require that notice of the public hearing be provided to the legislative body of every other township or municipality within the county.

Additionally, the bill would clarify that the legislative body of a township, municipality, or village could adopt ordinances to close roads located within their respective jurisdictions to the operation of ORVs.

BACKGROUND INFORMATION:

Legislative History. 2008 PA 240 amended NREPA to allow eligible counties (and local governmental units within eligible counties) to pass ordinances allowing ORVs to be driven by adults and children 12 and over with the flow of traffic on the far right of the maintained portion of streets and roads within the jurisdiction. 2008 PA 240 allowed Mason, Lake, Osceola, Clare, Gladwin, Arenac, and Bay County, and all counties north of those counties (including all of the Upper Peninsula) to pass ORV ordinances. 2009 PA 175 extended that ability to seven additional counties: Huron, Tuscola, Sanilac, St. Clair, Saginaw, Gratiot, and Montcalm.

Definition of ORV. As contained in MCL 324.81101(o), ORV means "a motor-driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. "ORV or vehicle" includes, but is not limited to, a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, 4-wheel, or 6-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. "ORV or vehicle" does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle

used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft."

ARGUMENTS:

For:

Expanding ORVs on public roadways to all parts of the state would provide a boost to the tourism industry. Allowing all counties to adopt ORV ordinances will help boost the state's tourist appeal by giving people more reason to visit and will help attract ORV enthusiasts that are currently going outside of Michigan. Additionally, the bill would increase fairness by treating all counties equally.

The bill provides "local control" over the decision to authorize ORV use within a jurisdiction. As is currently the case, the bill would not require any county to open its roads to ORV traffic but would allow them to do so if they chose.

Many feel the law has been successful in northern Michigan and other parts of the state where ORVs are currently allowed on the road. Supporters contend there has been no negative feedback from adopted ordinances. This is an opportunity to expand an existing, successful program to all counties in the state.

Against:

There is concern that the decision to open portions of certain roads is not being made by the entities that have responsibility for road and ditch maintenance (Michigan Department of Transportation and county road commissions), but rather by townships and other jurisdictions that do not have primary responsibility for maintenance. According to testimony, there is no revenue stream for the ORV user groups to contribute the maintenance of road right-of-ways. There is concern that the bill represents an expansion of the permitted use of the road infrastructure without any additional avenue for maintenance revenues.

This issue would become especially problematic if individuals began to use ORVs as an alternative mode of transportation instead of automobiles. Testimony indicated that one aim of the bill is to provide opportunities for ORV trail connection and expansion. However, there have been accounts of individuals using ORVs as an alternative mode of transportation on roads that have designated for such use.

As originally enacted, the designation of roadways for ORV use only applied to Mason, Lake, Osceola, Clare, Gladwin, Arenac, and Bay County, and all counties north of those counties (including all of the Upper Peninsula). Generally speaking, these counties are thought to have lighter traffic volumes than counties in the southern half of the Lower Peninsula. Some believe that expanding the opportunity to adopt ORV ordinances in more populous areas of the state could lead to potential safety issues as a result of heavier traffic flows. [Under the act, individuals are prohibited from operating an ORV at a

speed greater than 25 miles-per-hour or a lower posted speed limit, or in a manner that interferes with traffic on the road or street.]

By definition, ORVs are primarily intended for use on trails and other off-road settings, not on roadways and roadway shoulders. Roadway shoulders may not be built to withstand increased use and the act does not require a county, municipality, or township to maintain the shoulder of any road designated for ORV use "in a condition reasonably safe and convenient for the operation of ORVs." In the event that roadway shoulders are not maintained in a fashion safe for ORV operation, individuals may experience increased risk.

POSITIONS:

Michigan Association of Counties supports the bill.

Michigan Municipal League supports the bill. (5-9-13)

Michigan Department of Transportation is neutral on the bill. (4-25-13)

County Road Association of Michigan opposes the bill. (4-25-13)

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■ 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.