

Legislative Analysis



ALLOW ORV ORDINANCES IN ALL COUNTIES

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House Bill 4299 as enacted

Public Act 118 of 2013

Sponsor: Rep. Jon Bumstead

House Committee: Tourism

Senate Committee: Natural Resources, Environment and Great Lakes

Second Analysis (4-11-14)

BRIEF SUMMARY: Among other things, allows 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: 50 percent to the county sheriff or police department that is responsible for ORV enforcement and training, and 50 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:

Allow all counties to adopt ordinances

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.

The bill would eliminate reference to "eligible counties," therefore making it possible for all counties in the state to adopt such an ordinance.

[Currently, local units of government can authorize ORV use on the *maintained portion* of one or more roadways within their jurisdictions. The bill would remove reference to maintained portion and allow operation on one or more *county* roads.]

Notice of public hearing

Under prior law, a public hearing is required before a county, 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 also require that notice be provided to the legislative body of each township or municipality within the county, and to the Michigan Department of Transportation if the road intersects with a state highway. Under the bill, the same public notice requirements would apply to counties seeking to adopt an ordinance. If the jurisdiction is a southern county, or is located within a southern county, the appropriate legislative body would have to consult with the board of county road commissioners.

Road closures

The bill clarifies that a county can close up to 30 percent of the linear miles of county roads to ORV use, and that the legislative bodies of townships or municipalities could adopt ordinances closing county roads located within their jurisdictions. County roads could only be closed to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety.

Conformity amendments with HB 4284

As the bill moved through the process, language was added that reflects the provisions found in House Bill 4284 (which was enacted as Public Act 117, just prior to the enactment of House Bill 4299 as Public Act 118). That bill allows local units to seek state approval to permit ORVs to operate on the shoulders of state trunk line highways.

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.

The term 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. The term 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 additional reasons to visit and will help attract ORV enthusiasts 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. Responsible local officials would make the determination about the safety of allowing ORVs to use public roadways.

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 with 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 road safety and maintenance. According to testimony, there is no revenue stream for the ORV user groups to contribute to 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. This poses significant road safety issues.

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 where there are heavier traffic flows puts ORV operators and other motorists at risk. [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, and are not built to operate 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 face increased risk.

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