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BILL



ANALYSIS

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Senate Bill 206 (as enrolled)
 Sponsor: Senator John J.H. Schwarz, M.D.
 Senate Committee: Natural Resources and Environmental Affairs
 House Committee: Conservation, Environment, and Great Lakes

Date Completed: 4-10-95

RATIONALE

As the popularity of off-road vehicles (ORVs) has increased over the past few years, concern about the safe and responsible operation of these vehicles has prompted legislative action. Public Act 56 of 1990 requires all persons under 16 years of age to complete a safety education course before operating an ORV, and established a safety education fund from which grants may be made to schools and governmental agencies to cover the cost of courses. Public Act 71 of 1990 created the ORV Trail Improvement Fund for the improvement, maintenance, and construction of ORV trails, as well as the placement of signs. Public Act 17 of 1991 subsequently provided for the disbursement and expenditure of money from the Fund, required the Department of Natural Resources (DNR) to develop a comprehensive trail system for ORV use, and created various ORV boards and advisory committees. Many of these provisions, however, contained a sunset date of January 1, 1995, to provide for their review. The law apparently is considered a success, and legislation to repeal the sunset date was passed by the Senate in December 1994, but it was not enacted before the 1993-94 session was adjourned.

CONTENT

The bill would amend the off-road vehicle Act to:

- Reinstate repealed provisions concerning the allocation of revenue in the ORV Trail Improvement Fund, the creation of the ORV Trails Advisory Committee, and the exemption of the Upper Peninsula from certain requirements.

- Increase the ORV license fee to \$16.25 on April 1, 1996. (The current \$10 fee was increased from \$8 on April 1, 1995.)
- Allow dealers to keep 25 cents of each license fee as a commission.
- Revise the distribution of the Trail Improvement Fund, beginning April 1, 1996.
- Exempt from the Act's licensure provisions an ORV operated solely on private property by the property owner, a family member of the owner, or an invited guest of the owner.
- Extend to cities, villages, and townships immunity from tort liability for injuries or damages arising out of the operation of an ORV.
- Specify procedures for submitting revisions to the comprehensive system plan to the Legislature for approval.
- Impose a deadline on the development of an ORV safety education and training program and change the effective date for the requirement concerning possession of an ORV safety certificate.
- Prohibit a person from operating an ORV during certain hours in an area in which public hunting is permitted during the regular November firearm deer season, except under certain circumstances. Currently, the prohibition applies during the season open to the taking of deer, elk, or bear.

ORV Trail Improvement Fund

The bill specifies that at least 40% of the revenue in the ORV Trail Improvement Fund would have to

be distributed yearly to public agencies and nonprofit incorporated clubs and organizations as grants for planning, improving, constructing, signing, and maintaining ORV trails, areas, and routes, and access to them; the leasing of land; and the acquisition of easements, permits, or other agreements for the use of land for ORV trails, areas, and routes. This allocation would increase to 50% on April 1, 1996.

An application by an agency or a nonprofit club or organization would have to include a plan for restoration of any of the State's natural resources on public land that were damaged due to ORV use. The public agency or nonprofit organization would have to indicate that its use of the grant money was consistent with, and met the requirements of, the comprehensive plan for the management of ORV use of certain areas or routes maintained under the jurisdiction of the Department of Natural Resources (DNR) or a local government, as developed by the DNR pursuant to the Act, and that the trail, route, or area was available to the public. The Department could not approve a grant unless the application met the plan's requirements, and would have to consider grant requests yearly in consultation with the ORV Trails Advisory Committee. A grant could not be made for a trail, route, or area unless the trail, route, or area was available for ORV use and was approved by the DNR. A grant for the cost of leasing of land and the acquisition of easements, permits, or other agreements could equal 100% of incurred expense. Specifications would have to be prescribed by the Department.

At least 30% of the Fund's revenue in any year would have to be used for the enforcement of the ORV Act; this allocation would increase to 31.25% on April 1, 1996. Of this amount, the DNR would have to make available funds for distribution as grants by the Department to the county sheriffs' departments in the following percentage amounts: 60% of the funds available for the first year of operation; 50% of the funds available in the second year; 40% of the funds available through March 31, 1996; and 24% of the funds beginning April 1, 1996 and thereafter. The balance of the available funds would have to be used by the Department for enforcing the Act or purchasing any necessary equipment used for enforcement. In making grants available for distribution under this provision, the DNR would have to consider the following factors:

- The number of miles of ORV trails, routes, or areas within the county.

- The number of sheriff's department employees available for enforcement of the Act.
- The estimated number of ORVs within the county and brought into the county for ORV use.
- The estimated number of days that ORVs could be used within that county.
- Any other factors considered appropriate by the Department.

The DNR would have to require a county sheriff receiving a grant to maintain records and submit an annual report to verify expenditure of the grant money that was received.

At least 20% of the Fund's revenue in any year would have to be distributed as grants to public agencies and nonprofit incorporated clubs and organizations for the restoration of damage that was caused by ORV use to natural resources on public land; this allocation would decrease to 12.5% on April 1, 1996. An application for these grants would have to comply with the bill's provisions on applications for grants from the Fund. The bill specifies that grants provided for under this provision could be in addition to grants for planning, constructing, improving, and maintaining ORV trails and areas and their access as well as for leasing land, and acquiring easements, permits or other land use agreements for ORV trails, areas, and routes.

Not more than 3.125% of the Fund's revenue in any year could be used for administering the Act, except that 25 cents of each fee for a license sold by a dealer would have to be retained by the dealer as a commission for services rendered. The DNR could use revenue from the funds for personnel to operate the ORV program.

The remaining 3.125% of the Fund's revenue could be used for enforcement purposes or for grants for trail construction and maintenance, leasing, and easements. If the remainder of the Fund were used for enforcement, it would have to be allocated as provided in the bill. (Currently, "dealer" means a person engaged in the sale, lease, or rental of an ORV as a regular business. Under the bill, for purposes of selling licenses, "dealer" also would include any other person authorized to sell licenses and/or permits by the DNR under this State's statutes.)

Grants would remain available until spent once a contract or commitment had been entered into under the bill. A contract would be for up to two

years. A grant not spent within the contract period could be renewed by the Department's entering into a new contract.

ORV Trails Advisory Committee

The ORV Trails Advisory Committee would be created within the DNR to assist the Department in developing criteria for grants, nominate forest roads to be included as ORV routes, nominate forest trails, and assist the DNR in promulgating rules and developing the comprehensive plan for management of ORV use that the Department was required by the Act to develop. The Committee also would be required to advise the Department on recommendations made by ORV users of forest trails, roads, and areas that should be designated for ORV use.

The Committee would consist of six members appointed by the DNR Director. Three members would represent ORV trail users and dealers; two would represent natural resources, conservation, or environmental groups; and one, who would have to be a county sheriff, would represent law enforcement. At least one member would have to be from the Upper Peninsula. Members would have to be appointed for three-year terms, except that of the members first appointed, one from each group and the member representing law enforcement would have to be appointed for three years and the balance of the members would have to be appointed for two years. The Committee would have to meet at least once each year.

By January 1, 1998, the Committee would have to report to the Senate and House committees that consider ORV legislation on the adequacy of funding for the Act's operation and enforcement, any recommendations for changes in those areas, and the effectiveness of the safety and education training program.

Upper Peninsula Exemption

The bill specifies that provisions on the development of a comprehensive plan for management of ORV use, the ORV Trails Advisory Committee, and the submission of revisions to the comprehensive plan to the Legislature would not apply to the Upper Peninsula. By January 1, 1998, the advisory committee created by the Natural Resources Commission would have to report its findings to the Senate and House committees that consider ORV legislation, including its recommendations on whether the Act should be implemented on a Statewide basis.

ORV Use System

The Act required the Department to develop a comprehensive system for the use of ORVs on routes, trails, and areas, and to submit it to the Natural Resources Commission for approval. The Department then had to submit the Commission-approved system to the Secretary of the Senate and the Clerk of the House of Representatives. If the Legislature did not reject the system, all State-owned land under the Department's jurisdiction was to be closed to ORV use on the effective date determined by the Commission, except designated routes, trails, and areas. These provisions were repealed on January 1, 1995.

The bill specifies that under the comprehensive system previously approved and implemented, all State-owned land under the jurisdiction of the Department would have to be closed to ORV use except designated routes, trails, and areas. The Commission would have to approve any subsequent revisions to the system and would have to establish an effective date for the revisions. The Department would have to submit the revisions approved by the Commission to the Secretary of the Senate and the Clerk of the House of Representatives at least 20 session days before the effective date determined by the Commission. If both standing committees of the House and Senate that consider natural resources matters failed to reject the revisions within those 20 session days, they would be considered approved.

In developing the system, the Department would have to consider the needs of hunters, senior citizens, and handicappers.

ORV Safety and Training Program

The Act currently requires the Department of Education to implement a comprehensive ORV information, safety education, and training program for the public. The bill would impose an April 1, 1995, deadline on the implementation of the program, and specify that the program could include separate instruction for each type of ORV. Further, the bill would make it permissible rather than mandatory that the Department of Education promulgate rules to implement the Act's provisions concerning the establishment of the education and training program and the issuance of ORV safety certificates.

The Act currently permits a child under 16 to operate an ORV if he or she has an ORV safety

certificate, and requires the child to present it to a peace officer upon demand. The Act provides, however, that its possession or presentation requirement is not to take effect until six months after the promulgation of the rules concerning the implementation of the program. The bill provides that the requirement would not take effect until the implementation of the safety training program for the vehicle proposed to be operated. Further, the bill specifies that the requirement for possession or presentation of an ORV safety certificate for operation of a two-wheeled ORV or an ATV (all terrain vehicle) type ORV would not take effect until March 1, 1996.

City/Village/Township Immunity

Currently, the Act specifies that a board of county road commissioners, a county board of commissioners, and a county have no duty to maintain a highway under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs (with certain exceptions). The bill would extend this provision to a city, village, and township.

The Act also provides that a board of county road commissioners, a county board of commissioners, and a county are immune from tort liability for injuries or damages arising out of the operation or use of an ORV on highways, shoulders, and rights-of-way over which the board or county has jurisdiction. The bill would extend this to a city, village, and township beginning on the bill's effective date.

MCL 257.1601 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

At the time provisions regulating the use of ORVs were enacted, sunset dates were established to provide for a review of various provisions. The ORV advisory committee reportedly assessed these policies and recommended to the DNR that they continue. According to a representative of the U.S. Department of Agriculture's Natural Resources Conservation Service, in the part of the State where the law is in effect, the erosion and water quality problems that previously existed have been reduced. By reinstating the expired provisions, the bill would continue the distribution

of the ORV Trail Improvement Fund, which receives revenue from ORV certificate of title fees and is used to make grants and enforce the Act. The bill also would retain the ORV trails advisory committee, which assists the DNR in developing grant criteria and nominates ORV routes and forest trails. In addition, the bill would retain the State's comprehensive ORV trail system, resulting in the continuation of the State's policy that State forest land in the Lower Peninsula is closed to ORV use unless specifically posted open, and that State forest land in the Upper Peninsula is open to ORV use unless posted closed. Furthermore, the bill would establish an April 1, 1995, deadline for the Department of Education to implement an education and training program on the use of two- and four-wheeled ORVs. The Act currently requires the implementation of this program, but its establishment evidently has been delayed.

Response: A representative of the Michigan Sheriffs Association has suggested that, since sheriffs already go into the schools to give snowmobile training, the ORV education program could be combined with the snowmobile training program.

Supporting Argument

By increasing the ORV license fee to \$16.25 on April 1, 1996, the bill would generate an additional \$6 of revenue per license. Based on bill's revised allocation of the Trail Improvement Fund, \$4 of the increase would go toward trail improvement purposes, such as maintenance, signage, and trail connectors (from one loop to another). The remaining \$2 of the increase would go toward the DNR's law enforcement efforts. According to a DNR spokesperson, the law enforcement division currently enforces the ORV law but is not entirely reimbursed. The bill would alleviate that situation. In addition, the bill would allow dealers to keep 25 cents of each license fee as a commission, and would broaden the definition of "dealer" to include anyone authorized by the DNR to sell licenses and/or permits. This would enable hunting and fishing license agents, for example, to sell ORV licenses, and would bring ORV agents into the DNR's electronic licensure system.

Supporting Argument

Under the ORV Act, ORVs generally may not be used in areas open to public hunting from 7:00 a.m. to 11:00 a.m. or from 2:00 p.m. to 5:00 p.m. during "the season open to the taking of deer, elk, or bear". This ensures "quiet hours" when game will not be alarmed by the noise of ORVs, and ORV users will not be endangered by hunters. By referring to "the season open to deer, elk, or bear",

however, the law extends quiet hours from September 15 through the end of hunting season. The bill would retain the quiet hours restriction but refer more specifically to the “regular November firearm deer season”, which would return the law to its status before a 1991 amendment.

Supporting Argument

Public Act 204 of 1993 amended the ORV Act to provide immunity to counties and county boards for injuries and damages resulting from the operation of an ORV on roads, shoulders, and rights-of-way over which a county or board has jurisdiction. Although some county roads are designated as ORV access routes between State trails, some ORV users apparently were using undesignated roads and then suing county road commissions when injuries occurred. Public Act 204 relieved counties and county boards of this liability, and made it clear that they have no duty to maintain roads in a condition safe and convenient for ORV use. The bill would extend the same protections to cities, villages, and townships.

Supporting Argument

The bill would recreate the ORV Trails Advisory Committee and allow it to continue working on a permanent basis. According to a member of the Committee, it has worked very well in bringing together diverse interests, and ensured that the grants process has been effective and financially accountable.

Supporting Argument

It is not fair to make someone obtain a license in order to use an ORV or ATV solely on his or her own land--whether for recreational purposes or to plow a driveway. The bill would make it clear that a license was not required for the operation of an ORV on private property by the property owner or a family member or guest of the owner. According to a representative of the ORV Advisory Committee, this change would be in keeping with the spirit and intent of the law.

Opposing Argument

Rather than reenacting the Upper Peninsula's exemption from the law's “closed unless posted open” policy, the bill should extend that policy to the entire State. A uniform, Statewide policy would aid ORV users seeking legal places to ride and enjoy their activity. According to the Michigan United Conservation Clubs, the “closed unless posted open” policy is simple to understand and easy to enforce, while the Upper Peninsula's “open unless posted closed” approach fosters illegal use, the creation of unauthorized trails, trespass, and unlawful passage on county roads. The problems that led to ORV regulation in the Lower Peninsula--

such as eroded hillsides, silted up streams, and damaged flora--are moving to the Upper Peninsula. According to an editorial in the *Detroit Free Press* (1-19-94), “At Whitefish Point, the bird haven near Paradise, ORVs have scarred the dunes, torn up the beaches and ruined the nesting habitat of endangered piping plovers. Why should the state wait until damage is achingly evident all over the peninsula before it acts to protect resources that belong to everybody?” Instead of giving the Natural Resources Commission advisory committee three more years to make a recommendation on Statewide implementation of the Act--during which time untold damage to the environment could occur--the bill should bring in the Upper Peninsula into the “closed unless posted open” policy, either immediately or on a phased-in basis.

Response: Due to the type of soil found in the Upper Peninsula, the potential for environmental damage is not as great there as it is in the Lower Peninsula. In addition, an “open unless posted closed” policy is appropriate in the U.P. because the use of ORVs in the region is utilitarian rather than merely recreational. Furthermore, referring to the Upper Peninsula's policy as “open” actually may be misleading. According to a member of the ORV Advisory Committee, the only difference between the Upper and Lower Peninsulas concerns two-track forest roads; the rest of the land, including hills, streams, and meadows, is closed throughout the State.

Opposing Argument

Under provisions of the Act that the bill would reinstate, at least 30% of the ORV Trail Improvement Fund must be used for enforcement of the Act. Of this amount, 40% currently must be distributed to county sheriffs' departments. The bill would retain this allocation only through March 31, 1996. After that date, the amount required for county sheriffs would decrease to 24%. The balance would continue to go to the DNR. Since the number of ORVs being operated is growing, rather than declining, the problems associated with ORV use, as well as the need for law enforcement, also are on the rise. It is not clear why sheriffs should be given a smaller share of the Fund.

Response: Although the bill would decrease the percentage of the Fund allocated to sheriffs' departments, the Fund itself would be larger because of the proposed license fee increase. As a result, the actual amount distributed to sheriffs would not be affected. Also, the DNR, as well as county sheriffs, is responsible for enforcing the ORV law.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would restore the repealed provisions directing the use of the ORV Trail Improvement Fund, and would generate approximately \$608,000 in additional revenue to the State (as of April 1996). This assumes 101,300 registrations. The bill would change percent allocations along with increasing revenue, providing a potential increase of \$405,200 in ORV grants (to the State, local units of government, and/or organizations) and \$202,600 in State law enforcement efforts. The amount of funds available for grants for local enforcement and DNR administrative costs would remain unchanged. However, the bill now would allow the Department to use revenue for personnel to operate the program, which could provide an indeterminate increase in program funding.

For FY 1994-95, approximately \$1,000,000 in revenue is projected, with \$705,800 appropriated to the Department of Natural Resources and distributed as follows: \$539,000 (54%) in ORV Trail Improvement Grants, \$130,700 (13%) for DNR Law Enforcement, and \$36,100 (4%) for administration.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.