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BILL ANALYSIS

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House Bill 4323 (Substitute H-2 as passed by the House)
Sponsor: Representative Joel Sheltrown
House Committee: Tourism, Outdoor Recreation, and Natural Resources
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 4-14-08

CONTENT

The bill would amend Part 811 (Off-Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act to do the following:

- Allow specific counties in the Lower Peninsula, all of the counties in the Upper Peninsula, and the cities and villages in them to adopt ordinances authorizing the operation of ORVs (off-road vehicles) on the maintained portion of streets and roads.
- Delete provisions that allow local units to adopt ordinances authorizing access routes along streets and roads.
- Provide that the local ordinance provisions and any ordinance adopted under them would apply until five years after the bill's effective date.
- Require a person younger than 18 to possess a driver license and ORV safety certificate and operate under the direct supervision of a parent or guardian in order to operate an ORV under a local ordinance.
- Prohibit a person under the age of 12 from operating an ORV under a local ordinance.
- Provide that an ORV operator would be considered prima facie negligent in a collision with another vehicle on a road or street.
- Designate a violation of a local ordinance as a municipal civil infraction, and subject a violator to a civil fine and the costs of repairing any damage he or she caused.

- Require the fine revenue and damages to be deposited into a local unit's "ORV Fund", half of which would have to be allocated to the local law enforcement unit, and half to the entity responsible for street and road maintenance.
- Increase the minimum fine for certain misdemeanor violations.

ORV License

Currently, except as otherwise provided by law, an ORV may not be operated on or over land, snow, ice, marsh, swampland or other natural terrain unless licensed by the owner with the Department of Natural Resources (DNR) or a dealer as provided in Part 811. Except as otherwise provided, a vehicle operating on a forest trail or in a designated area must be licensed under Part 811.

The bill also would prohibit a person from operating an ORV on the maintained portion of a road or street pursuant to a county or municipal ordinance (described below), unless the ORV were licensed with the DNR or a dealer as provided in Part 811.

ORV Operation by a Child or Disabled Person

Under Part 811, subject to certain provisions, a child younger than 16 may not operate an ORV unless he or she is under the direct visual supervision of an adult and has in his or her immediate possession an ORV safety certificate issued under Part 811 or a comparable certificate issued under the authority of another state or a province of

Canada. The possession of an ORV safety certificate also is required for a child who is at least 12 but under 16 to cross a street or highway or operate on the right-of-way or shoulder of a road.

When operating an ORV, a child must present the safety certificate to a peace officer upon demand. Under the bill, this requirement would apply to a child younger than 16.

In addition to the age restriction described above, a child under the age of 12 may not operate a four-wheeled all-terrain vehicle (ATV), unless he or she is at least 10 years old and on private land owned by his or her parent or legal guardian. A child under the age of 16 may not operate a three-wheeled ATV. Part 811 also prohibits a child's parent or legal guardian from permitting the child to operate an ORV in violation of the age restrictions and specified requirements; and prohibits the owner or operator of an ORV from knowingly permitting it to be operated by a child in violation of the age restrictions and requirements.

Additionally, the owner or person in charge of an ORV may not knowingly allow it to be operated by a person who is incompetent to do so because of mental or physical disability, except as otherwise provided.

Under the bill, all of these requirements would apply in addition to any applicable requirements of Section 81131(8). (As described below, that section would prohibit a child younger than 12 from operating an ORV on a road or street under a local ordinance, and prescribe requirements for a person younger than 18 operating an ORV pursuant to a local ordinance.)

Local Ordinance

Adoption of Ordinance. Currently, a local unit of government may pass an ordinance establishing access routes along streets and highways under its jurisdiction, if those routes do not involve State or Federal highways, and if they meet the requirements of the plan developed under Section 81127 (which pertains to the designation of ORV routes, trails, and areas on State-owned land). If necessary, consent of a State or Federal land management agency must be obtained for the location of a route.

The bill would delete these provisions. Instead, the county board of commissioners of an "eligible county" (i.e., Arenac, Bay, Clare, Gladwin, Lake, Mason, or Osceola County, or a county lying north of those counties, including all of the counties in the Upper Peninsula) could adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more roads located within the county. At least 28 days before a public hearing on the ordinance, the county clerk would have to send notice of the hearing, by certified mail, to the county road commission and, if State forestland were located within the county, to the DNR.

(Under the bill, "road" would mean a county primary road or county local road as described in Public Act 51 of 1951, the Michigan Transportation Fund (MTF) law.)

The board of county road commissioners could close a road to the operation of ORVs to protect the environment or if the operation of ORVs posed a particular and demonstrable threat to public safety. A county road commission could not close more than 30% of the linear miles of roads located within the county to ORV operation.

The bill also would allow the legislative body of a municipality (a city or village) located in an eligible county to adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more streets within the municipality. ("Street" would mean a city or village major street or city or village local street as described in the MTF law.)

If a county or municipality adopted an ordinance, a person could operate an ORV with the flow of traffic on the far right of the maintained portion of the road or street covered by the ordinance. A person could not operate an ORV under these circumstances at a speed greater than 25 miles per hour or a lower posted ORV speed limit, or in a manner that interfered with traffic on the road or street. Off-road vehicles would have to travel single file, except that an ORV could travel abreast of another when it was overtaking and passing, or being overtaken and passed by, another ORV.

These provisions and any ordinance adopted under them would not apply beginning five years after the bill took effect.

Headlights & Taillights. In addition to any applicable requirement of Section 81133(c), a person could not operate an ORV under a local ordinance when visibility was reduced substantially due to weather conditions without displaying a lighted headlight and lighted taillight. Beginning January 1, 2010, a person could not operate without displaying a lighted headlight and lighted taillight.

(Section 81133(c) prohibits a person from operating an ORV between one-half hour after sunset and one-half hour before sunrise without displaying a lighted headlight and lighted taillight.)

Age Provisions. The bill would prohibit a person younger than 18 from operating an ORV under a local ordinance unless he or she were in possession of a valid driver license or under the direct supervision of a parent or guardian and had in his or her immediate possession an ORV safety certificate. A person younger than 12 could not operate an ORV under a local ordinance. These requirements (in Section 81131(8)) would apply in addition to any other applicable age requirements.

Local Unit Duties. Currently, a board of county road commissioners, a county board of commissioners, or a local unit of government does not have a duty to maintain a highway under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except for ORVs registered as motor vehicles or those permitted by a local ordinance. The bill would refer to a municipality rather than a local unit of government. The bill also would refer to roads and streets rather than highways in this and other provisions.

Negligence. Under the bill, in a court action in Michigan, if competent evidence demonstrated that a vehicle that was permitted to operate on a road or street pursuant to the Michigan Vehicle Code had been in a collision with an ORV required to be operated on the far right of the maintained portion of a road or street pursuant to an ordinance, the operator of the ORV would be considered prima facie negligent. ("Prima facie" means sufficient to

establish a fact or raise a presumption unless disproved or rebutted.)

Violations & Penalties. A violation of a local ordinance under the bill would be a municipal civil infraction. The ordinance could provide for a maximum fine of \$500 for a violation. In addition, the court would have to order the defendant to pay the cost of repairing any damage to the environment, a road or street, or public property as a result of the violation. The treasurer of the local unit of government (i.e., the county or municipality) would have to deposit fines collected by that local unit under Section 8379 of the Revised Judicature Act and these provisions, and damages collected under these provisions, into a fund to be designated as the "ORV Fund".

The legislative body of the local unit would have to appropriate 50% of the revenue in the Fund to the county sheriff or police department responsible for law enforcement in the local unit for ORV enforcement and training. The balance would have to be appropriated to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village, for repairing damage to roads or streets and the environment that could have been caused by ORVs, and for posting signs indicating ORV speed limits or indicating whether roads or streets were open or closed to ORV operation.

(Section 8379 of the Revised Judicature Act provides for the allocation of fines and costs assessed in the district court.)

Operation Near Slide, Ski, or Skating Area

Part 811 prohibits a person from operating an ORV within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area. The bill would add an exception for a vehicle being operated pursuant to a county or municipal ordinance.

Violations & Penalties

Except as otherwise provided, a person who violates Part 811 is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$50 but not more than \$1,000 per violation. Specified violations are designated State civil

infractions for which the violator may be ordered to pay a maximum civil fine of \$500.

Under the bill, a person who violated Section 81133(e) by operating an ORV in a manner that created an erosive condition, or who violated Section 81133(i) or (o) would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of not less than \$250 or more than \$1,000 for each violation.

(Section 81133(e) prohibits a person from operating an ORV in a State game area, park, or recreation area, except on designated roads, trails, and areas; on other State-owned land under the DNR's control where the operation would be in violation of Department rules; in a forest nursery or planting area; on public land posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the DNR; or in any area in a manner that creates an erosive condition or injures, damages, or destroys trees or growing crops.

Section 81133(i) prohibits a person from operating an ORV in or upon the land of another without the written consent of the owner, the owner's agent, or a lessee, when required by Part 731 (Recreational Trespass).

Section 81133(o) prohibits a person from operating an ORV in or upon the water of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.)

ORV Seizure

In addition to the penalties otherwise provided under Part 811, a court may order a person to restore, as nearly as possible, any land, water, stream bank, stream bed, or other natural or geographic formation damaged by a violation to the condition it was in before the violation occurred.

Upon a person's conviction for a violation of Part 811 that is punishable as a misdemeanor or any other provision of Part 811 that results in damage to the particular area in which the ORV was used, a court may order the ORV and any personal property on it seized as a result of the

violation to be returned to the owner or, upon recommendation of the local prosecuting attorney, turned over to the DNR. An ORV turned over to the DNR must be disposed of in the manner provided for condemnation of property as prescribed in the Act. Under the bill, these provisions would apply upon conviction of a person for a violation described above.

Access Route References

The bill would replace references to designated access routes and ORV access routes authorized by local ordinances, with references to roads and streets on which ORV use is authorized pursuant to a county or municipal ordinance.

MCL 324.81115 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of violating Part 811. To the extent that the bill resulted in an increase or decrease in convictions or incarceration time, local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.