

# Legislative Analysis

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## OHV SAFETY TRAINING

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### House Bill 6161

**Sponsor: Rep. Wayne Schmidt**

**Committee: Tourism, Outdoor Recreation and Natural Resources**

**Complete to 6-21-10**

## A SUMMARY OF HOUSE BILL 6161 AS INTRODUCED 5-12-10

The bill would amend Part 811 (Off-Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act to revise the Department of Natural Resources and Environment's ORV safety training program in the following ways:

- Change "ORV" to "OHV" wherever it appears in Sections 81129 and 81130. "OHV" is an acronym for "off-highway vehicles."
- Require, rather than allow, the DNRE safety training program for youthful operators to include separate instruction *for each type of OHV*.
- Require the DNRE to establish a program to regulate the licensure and operations of OHV safety instructors, rather than designate who is qualified to teach ORV courses and award ORV safety certificates.
- Require the DNRE to establish a safety training academy within 90 days, appoint a chief OHV training instructor for the academy, and require the academy's course of instruction to include "all training required under a nationally recognized OHV safety training course."
- Prohibit the academy from charging a fee for instructor training.
- Require *new* OHV safety instructors to successfully complete a course at the safety academy to become certified; require *current* OHV safety instructors to complete the academy course within two years.
- Require individuals seeking certification as OHV instructors to submit to a criminal background check before admission to the academy.
- Limit academy classes to no more than 30 students; require the DNRE to provide instructor manuals that include a section on the responsible use of an OHV; and require the DNRE to meet annually with OHV user groups to update the training materials.
- Prohibit ORV safety instructors from charging more than \$20 per student *for classroom instruction*; allow instructors to charge additional fees for hands-on instruction as determined appropriate by the department; allow a student's parent or guardian to attend for free (unless the parent or guardian is attending for the purpose of receiving an OHV safety certificate).
- Eliminate provisions that currently allow a college, university, intermediate school district, local school district, government agency, or non-profit service organization to conduct an ORV safety course, apply to the DNRE for a grant from the Off-Road Vehicle Account to cover the cost of conducting the

course, and charge a fee of no greater than \$25 per student (or the cost of one credit hour in the case of a university or community college).

- Eliminate a provision allowing private business enterprises to offer ORV safety courses for a fee that does not exceed the cost of conducting the course.
- Eliminate an existing provision that requires an annual inspection of course sites.
- Require the DNRE to develop and implement an OHV training program that included the actual operation of OHVs as part of the training curriculum within two years.
- Require programs conducted by certified instructors for the Motorcycle Safety Foundation, the Safety Vehicle Institute of America,<sup>1</sup> the United Four Wheel Drive Association, and the Recreational Off-Highway Vehicle Association to be recognized until the DNRE's hands-on training program has been developed and implemented.
- Eliminate an existing provision (Section 81129(17)) that made the requirement that an ORV operator younger than 16 possess or present a safety certificate inapplicable until the Department of Natural Resources and Environment implemented a training program for the type of vehicle to be operated, and renumber the remaining subsections found in Section 81129 accordingly. [Note: According to the DNRE, this provision was intended to cover the transition period after Public Act 111 of 2003 shifted responsibility for ORV safety education from the Department of Education to the department now known as the DNRE. DNRE-approved ORV safety courses have been available for many years.]

## **FISCAL IMPACT:**

A fiscal analysis is in process.

## **DETAILED SUMMARY:**

Except where otherwise indicated, the bracketed section numbers after paragraph headings refer to section numbers *in the bill*.

DNRE's comprehensive OHV information, safety education, and training program. [§81129(8)] Current Section 81129(8) requires the DNRE to implement a comprehensive ORV information, safety education, and training program. The program must provide for the training of youthful operators and for the issuance of OHV safety certificates to those who have successfully completed the training. It also must include the preparation and dissemination of safety information and advice to the public. The bill would retain these requirements, but change "ORV" to "OHV" wherever it appears. Currently, the training program for youthful operators *may* include separate instruction for each type of vehicle. The bill would change "*may*" to "*shall*," making it mandatory that the training program include separate instruction *for each type of OHV*.

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<sup>1</sup> "Safety Vehicle Institute of America" should probably be changed to "Specialty Vehicle Institute of America," "All-Terrain Vehicle Safety Institute," or "ATV Safety Institute." The All-Terrain Vehicle Safety Institute or ATV Safety Institute is a division of the Specialty Vehicle Institute of America.

[Note: Many different vehicles, including ATVs, motorcycles, dirt bikes, amphibious vehicles, hovercraft, four-wheel drive trucks, and recreation utility vehicles, meet the current definition of ORV in Part 811. Farm vehicles being used for farming, registered snowmobiles and aircraft, and other specified vehicles are not considered ORVs. In some cases, it may difficult to determine whether a particular vehicle or vehicle class is considered an ORV under the act. See the full definition of ORV below.<sup>2</sup> A tie-barred bill, House Bill 6159, would amend the current definition of ORV to remove the reference to ground effect air cushion vehicles (hovercraft) and change "ORV" to "OHV."]

Cooperation and consultation with other entities. [§81129(9)] Section 81129(9) currently requires the DNRE to implement its ORV safety information and training program in cooperation with private organizations and associations, private and public corporations, the Department of Education, the Department of State, and local governmental units. In addition, the DNRE must consult with ORV and environmental organizations and associations regarding the subject matter of the training program and performance testing for awarding safety certificates. The bill would retain these requirements, but change "ORV" to "OHV" wherever it appears. [In contrast, Section 81130(4)(c), found on p. 10, lines 4-6 of the bill, would require the DNRE to meet annually *only with OHV user groups* to update instructor training materials.]

Licensure of OHV safety instructors; course fees. [§81129(10)] The current provision allowing the DNRE to designate who is qualified to provide ORV course instruction and to award ORV safety certificates would be deleted and replaced with a provision ***requiring the DNRE to establish a program to regulate the licensure and operations of OHV safety instructors.*** At a minimum, this program would have to establish basic experience, training, and fitness requirements for instructors.

The DNRE would be required to limit the fee charged by an OHV safety training instructor to \$20 per student. An instructor could not charge any additional fee unless the department determined that additional fees for hands-on instruction were appropriate. (A separate section of the bill, Section 81130(1), would also impose a fee limit of \$20 per student fee *for classroom instruction*, and would allow the parent or legal guardian of a child younger than 16 to attend the class free of charge unless doing so to receive an OHV safety certificate.) The department would be required to authorize OHV safety instructors to issue OHV safety certificates in a form and manner it determined appropriate.

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<sup>2</sup>Section 81101(o), MCL 324.81101(o), defines "ORV" or "vehicle" as "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.

The bill would delete existing Sections 81130(3), which prohibits any entity (other than a private business enterprise) offering ORV safety education courses from charging more than \$25 per student for the course (or more than the cost of one credit hour of instruction in the case of a university or community college), and requires course fees to be used only for the administration and implementation of the course. The bill would also delete Section 81130(4), which provides that private business enterprises may conduct ORV safety education courses approved by the DNRE and "charge a course fee not to exceed the cost of conducting the course."

Course completion requirement; written test or driving test. [§81130(1)] Under current Section 81130(1), a person younger than 16 must complete a DNRE-approved safety education course before operating an ATV or ORV. The course may include a written examination and a driving test designed to test the competency of the applicant, and upon successful completion of the course, the person must receive an ORV safety certificate. The bill would retain these requirements, changing "ORV" to "OHV." As described earlier, the bill would also limit the fee charged for the classroom instruction portion of a safety education course to no more than \$20 per student and allow a parent or legal guardian of a person under 16 years old to attend free of charge unless attending to receive an OHV safety certificate.

Eliminate grants for certain safety education courses. [Current §81130(2) to be deleted.] Current Section 81130(2) requires the safety education courses conducted by certain educational, governmental, or non-profit entities (a college or university, intermediate or local school district, law enforcement agency, other governmental agency located in Michigan, or a department-approved nonprofit service organization) to be conducted in accordance with Section 81130, and allows an agency or school to apply to the DNRE for a grant from the Off-Road Vehicle Account for the costs associated with conducting a course. The bill would delete current Section 81130(2).

Inspection of course sites. [Current §81130(6) to be deleted.] The bill would delete current Section 81130(6), which requires annual inspections of course sites to be performed by person who has successfully completed ATV and ORV safety courses.

Safety training academy. [§81130(2)] Within 90 days after the bill took effect, the DNRE would be required to establish an OHV safety training academy, and appoint a chief OHV training instructor for the academy. An individual who became an OHV instructor after the bill's effective date would be required to successfully complete a course of instruction at the academy before being certified as an OHV instructor. (In some places, the bill refers to licensure of instructors, in others to certification.) The academy's course of instruction would include "all training required under a nationally recognized OHV safety training course." The academy could not charge a fee for instructor training.

The bill would delete current Section 81130(5), which requires the designation of a state coordinator of the ATV and ORV safety education, and requires the coordinator to have successfully completed ATV and ORV safety courses.

OHV instructors. [§81130(3)] An individual who was already an OHV instructor on the bill's effective date would have to complete the academy's instructor training course within two years after the bill's effective date.

Requirements for academy's instructor training course. [§81130(4)] The following requirements would apply to the OHV instructor training program to be offered by the academy:

- An individual seeking certification as an OHV instructor would have to submit to a criminal background check before admission to the academy.
- An academy class could have no more than 30 students per instructor.
- The DNRE would have to provide instructor manuals that highlight the material to be covered in the classroom
- The DNRE would have to meet annually with OHV user groups to update the training material "to the most current and suitable methods."
- A section of the instructor manual would be devoted to the responsible use of an OHV and be updated as considered necessary by the DNRE.

Hands-on training. [§81130(5)] The DNRE would have to develop and implement an OHV training program that included the actual operation of OHVs as part of the training curriculum within two years after the bill took effect. All programs conducted by certified instructors for the Motorcycle Safety Foundation, the Safety Vehicle Institute of America, the United Four Wheel Drive Association, and the Recreational Off-Highway Vehicle Association would have to be recognized during the interim period. [Safety Vehicle Institute of America" should probably be changed to "Specialty Vehicle Institute of America," "All-Terrain Vehicle Safety Institute," or "ATV Safety Institute." The All-Terrain Vehicle Safety Institute, also called the ATV Safety Institute, is a division of the Specialty Vehicle Institute of America.]

Eliminate existing exception relating to availability of DNRE ORV safety courses. [Current Section 81129(17) to be deleted.] The bill would delete current Section 81129(17), which provides that the requirement for a child to possess or present ORV safety certificates "does apply until implementation of the program for the vehicle proposed to be operated required by subsection (8)." [Note: According to the DNRE, this provision was intended to apply during the transition period after Public Act 111 of 2003 shifted responsibility for ORV safety education from the Department of Education to the department now known as the DNRE.]

As described below, the deletion of current subsection (17) would result in current subsections (18)-(21) being renumbered (17)-(20), and require numerous cross-references found in Section 81129 to be adjusted.

Organized riding and racing events. [§81129(17)] Under current Section 81129(18), a child does not need to possess a safety certificate, and the minimum age for operating a 4-wheeled ATV does not apply, if a child is participating in an "organized ORV riding or racing event" that meets all prescribed requirements. The bill would retain this provision, but change "ORV" to "OHV" wherever it appears, and renumber it Section 81129(17).

Child injuries or deaths in organized riding or racing events. [§81129(18)] Under current Section 81129(18), when a child younger than 16 is injured in an organized ORV riding or racing event, the event organizer must submit a report of the injury to the DNRE within 30 days on a form developed by the department. This report must include all of the following information: (1) whether any participant younger than 16 was killed or suffered an injury requiring transportation to a hospital as a result of an ORV accident at the event; the child's age; (3) whether the child had a safety certificate; (4) the type of ORV operated; (5) a description of the accident and the injury. The bill would retain this provision, but change "ORV" to "OHV" wherever it appears, and renumber it Section 81129(18).

DNRE report to Legislature. [§81129(19)] Under current Section 81129(20), the DNRE must submit a report to the Legislature by December 31 each year that summarizes the reports regarding children's injuries or deaths at organized riding or racing events that it received during the preceding calendar year. In its report to the Legislature, the DNRE may recommend amendments to Part 811 to improve the safety of children who participate in organized ORV riding or racing events. The bill would change "ORV" to "OHV" wherever it appears and renumber it Section 81129(19).

[Note: The preceding two sections were added to Part 811 by Public Act 164 of 2008, effective June 19, 2008. To our knowledge, the DNRE has neither developed a report form for use by event organizers nor submitted any annual reports to the Legislature as required by that act.]

Prohibit parent or guardian from allowing a child younger than 16 to operate an ORV unless the child has a safety certificate and is under the direct visual supervision of an adult; exceptions. [§81129(1)] Section 81129(1) currently makes it unlawful for *a parent or legal guardian* to allow a child younger than 16 to operate an ORV unless the child is under the "direct visual supervision of an adult" (not necessarily the parent or legal guardian) and the child has in his or her immediate possession an ORV safety certificate issued under Part 811 or a comparable one issued by another state or Canadian province. (In Part 811, "visual supervision" means "the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator." MCL 324.81101(w))

Section 81129(1) is currently subject to subsections (2), (3), (17), and (18). The bill would retain Section 81129(1), change "ORV" to "OHV" wherever it appears, and make Section 81129(1) subject to only subsections (2), (3), and (17):

- Subsection (2) prohibits a parent or guardian from allowing a child younger than 12 to operate a 4-wheeled ATV, unless the child is at least 10 years old and is on private land owned by the parent or guardian (or unless the ATV is being used in agricultural operations).
- Subsection (3) prohibits a parent or guardian from allowing a child younger than 16 to operate a 3-wheeled ATV.

- Subsection (17) (current subsection (18)) waives the minimum age for operating a 4-wheeled ATV and the safety certificate requirement for a child who operates an OHV at certain organized riding or racing events.)

Prohibit an owner or person in charge of an ORV from allowing a child younger than 16 to operate an ORV unless the child has a safety certificate and is under the direct visual supervision of an adult, exceptions. [§81129(4)] Section 81129(4) currently makes it unlawful for *the owner or person in charge of an ORV* to knowingly permit the ORV to be operated by a child younger than 16, unless the child is under the direct visual supervision of an adult and the child has a safety certificate in his or her immediate possession.

Section 81129(4) is currently subject to subsections (5), (6), (17) and (18). The bill would retain Section 81129(4), changing "ORV" to "OHV" wherever it appears, and make Section 81129(4) subject only to subsections (5), (6), and (17):

- Subsection (5) prohibits an owner or person in charge of a ATV from knowingly allowing a child younger than 12 to operate a 4-wheeled ATV, unless the child is at least 10 years old and is on a parent or guardian's own private land (or unless the ATV is being used in agricultural operations).
- Subsection (6) prohibits an owner or person in charge of an ATV from allowing a child younger than 16 to operate a 3-wheeled ATV.
- Subsection (17) (current subsection (18)) waives the minimum age for operating a 4-wheeled ATV and the safety certificate requirement for a child who operates an OHV at certain organized riding or racing events.)

Prohibit the owner or person in charge of an ORV from knowingly permitting it be operated by a person incompetent to do so; exception. [§81129(7)] Under current Section 81129(7), it is unlawful for the owner or person in charge of an ORV to knowingly permit the vehicle to be operated by a person who is incompetent to do so because of a mental or physical disability "except as provided in Section 81131." Among other things, Section 81131 allows a municipality (meaning a city or village) to adopt an ordinance permitting a permanently disabled person to operate an ORV in that municipality. Section 81131 also authorizes eligible counties and townships to adopt ORV ordinances opening their roads to ORVs. The bill would retain current Section 81129(7), changing "ORV" to "OHV" wherever it appears in this section. [Note: A tie-barred bill, House Bill 6162, would amend Section 81131 to allow any county in Michigan to adopt an ordinance allowing ORVs to be ridden on the far right-hand side of its roads, including road shoulders, and would allow the State Transportation Commission to open state highways to ORV travel.]

Prohibit a child younger than 16 from operating an ORV unless the child has a safety certificate and is under the direct visual supervision of an adult; exceptions. [§81129(12)] Section 81129(12) makes it unlawful for a child younger than 16 to operate an ORV unless he or she is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued under Part 811

(or a comparable one issued by another state or Canadian province). Section 81129(12) is currently subject to subsections (13), (14), (17), and (18). The bill would retain Section 81129(12), change "ORV" to "OHV" wherever it appears, and make Section 81129(12) subject only to subsections (13), (14), and (17):

- Subsection (13) prohibits a child who is younger than 12 to operate a 4-wheeled ATV unless the child is at least 10 years old and on private land owned by a parent or legal guardian (or unless the ATV is being used in agricultural operations).
- Subsection (14) prohibits a child younger than 16 from operating a 3-wheeled ATV.
- Subsection (17) (current subsection (18)) waives the minimum age for operating a 4-wheeled ATV and the safety certificate requirement for a child who operates an OHV at certain organized racing and riding events.

DNRE rulemaking authority. [§81129(11)] The department is currently authorized to promulgate rules to implement subsections (8) to (10) and (18) of Section 81129. The bill would replace subsection (18) with subsection (17). In other words, as amended by the bill, department could promulgate rules to implement the following subsections:

- Subsection (8) (the requirement that the DNRE implement an OHV information, safety education, and training program).
- Subsection (9) (the requirement that the DNRE cooperate or consult with other entities to implement this program).
- Subsection (10) (the requirement that the DNRE establish a program to regulate the licensure and operations of OHV safety instructors, limit fees, and regulate the issuance of safety certificates).
- Subsection (17) (the provision waiving the minimum age for operating a 4-wheeled ATV and the safety certificate requirement for organized OHV riding or racing events meeting prescribed requirements).

Presentation of safety certificate upon demand by peace officer. [§81129(15)] Section 81129(15) requires children younger than 16 years old to present an ORV safety certificate to a peace officer upon demand, subject to subsection (18) (the provision allowing children younger than 16 to participate in certain organized racing and riding events without safety certificates). The bill would retain Section 81129(15), change "ORV" to "OHV" wherever it appears, with the same exception renumbered subsection (17).

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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.