

Legislative Analysis



ALLOW ORV ORDINANCES IN ALL COUNTIES

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4925 (Substitute H-1)

Sponsor: Rep. Jon Bumstead

Committee: Natural Resources, Tourism, and Outdoor Recreation

First Analysis (5-1-12)

BRIEF SUMMARY: The bill would make it possible for local units of government to adopt ordinances allowing off-road vehicles (ORVs) to operate on the side of certain maintained roads in all counties in the state. Under current law, only counties specifically mentioned in the act are eligible to adopt such ordinances.

FISCAL IMPACT: House Bill 4925 would have no significant fiscal impact for 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% to the county sheriff or police department that is responsible for ORV enforcement and training, and 50% 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 allowing the adoption of such ordinances in all counties in the state will encourage participation in the fast-growing recreational activity of ORV use and boost tourism.

THE CONTENT OF THE BILL:

The bill would amend Part 811 (Off-Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act (NREPA) to allow for the adoption of ordinances allowing ORVs to operate on the side of certain maintained roads in all counties in the state.

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 4925 (H-1) would eliminate reference to "eligible counties," therefore making it possible for all counties in the state to adopt such an ordinance.

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. 2011 PA 107 subsequently made several changes that are noted above.

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.

The bill may violate the State Constitution of 1963. As noted during testimony, the state highway system is under the exclusive authority of the State Transportation Commission. Some believe this law, first enacted in 2008, is unconstitutional because it takes away the decision-making authority from MDOT and places it with local units of government. The law, however, has never been challenged in court. While current law only applies to county and city roads, many feel the aim is to expand ORV use to state highways. Senate Bill 1020, introduced on March 15, 2012, would allow county boards of commissioners in eligible counties to designate certain portions of state trunkline highways, provided the conditions in the bill are met.

Some testimony indicated the bill would only apply to secondary county and local roads that receive light vehicle traffic. However, as written, the bill would allow all county primary and local roads, or city major and local streets, to be designated for ORV use, as determined by the appropriate local legislative body. This could allow busy, well-traveled roads to be opened up to ORV traffic, presenting obvious safety concerns. It should be noted the act allows county road commissions to close a road to the operation of ORVs to "protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety." Additionally, the decision to open parts of roads to ORV use would have to be made by the appropriate local legislative body after conducting a public hearing.

It was recommended by the groups opposing the legislation that an advisory group be formed under the authority of the State Transportation Commission to advise the Commission on the safe and appropriate operation of ORVs on roadways.

POSITIONS:

Michigan Association of Counties supports the bill. (4-24-12)

MMRC - ATV Off-Road Club supports the bill. (12-6-11)

Michigan Department of Transportation opposes the bill. (4-24-12)

County Road Association of Michigan opposes the bill. (4-24-12)

Legislative Analyst: Jeff Stoutenburg
Fiscal Analyst: Viola Bay Wild

■ 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.