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BILL



ANALYSIS

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Senate Bill 50 (as introduced 1-16-13)  
Sponsor: Senator Tom Casperson  
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 3-20-13

### **CONTENT**

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

- **Require the Michigan Department of Transportation (MDOT), by May 1, 2014, to authorize the operation of off-road vehicles (ORVs) on the maintained portion of a State trunkline highway, other than an interstate highway, on all or part of at least 10 highways in the Upper Peninsula and at least five highways in eligible counties in the Lower Peninsula.**
- **Permit the county board of commissioners of an eligible county, after December 31, 2014, to adopt an ordinance authorizing the operation of ORVs on the maintained portion of a State trunkline highway, other than an interstate highway.**
- **Require a stretch of highway to meet certain conditions in order for MDOT or a county board of commissioners to authorize ORV use on it.**
- **Prescribe procedures by which MDOT could close a highway to ORV operation authorized by a county.**
- **Prohibit a county road commission from closing more than 30% of the road mileage within a township, rather than the county, to ORV use.**
- **Provide that the State, a board of county road commissioners, a board of county commissioners, and a municipality would be immune from tort liability for injuries or damage sustained from the operation or use of an ORV on highways.**
- **Allocate to MDOT 50% of the fine revenue for a violation of a county ordinance allowing ORV operation on a State highway.**
- **Provide that a person who violated an MDOT rule or order related to ORV use on highways would be responsible for a State civil infraction.**
- **Provide that a person participating in the sport of ORV riding would accept the risks associated with the obvious and inherent dangers of the sport.**
- **Require the Department of Natural Resources (DNR) to designate at least two days each year as free ORV-riding days, during which ORV licensure would not be required.**
- **Provide that licensure would not be required for an ORV that was licensed in another state and operated in Michigan only in Gogebic, Iron, Dickinson, and Menominee Counties south of U.S.-2.**

- **Provide that ORV licensure would not be required if the DNR waived the license requirement for Department-sponsored events. Prohibit the DNR from requiring a permit for an event that involved 75 or fewer ORVs on the frozen surface of public water or on State-owned land, unless the event conflicted with rules not related to ORV events.**
- **Authorize operation of an ORV on the roadway or shoulder when necessary to cross a bridge or culvert, if certain conditions were met.**

The bill would repeal Section 81102, which contains several exemptions to ORV licensure requirements, and reenact those exemptions elsewhere in Part 811. The bill also would repeal Section 81128, which established a citizens review board to make recommendations to the Legislature regarding the State's ORV trail system and required the board to disband after submitting its report.

#### ORV Operation on State Trunkline Highway

Part 811 allows the county board of commissioners of an eligible county to adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more roads within the county. Similarly, the board of a township located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more roads within the township. ("Eligible county" means any of the following counties: Gratiot, Montcalm, Newaygo, Oceana, Saginaw, Sanilac, Tuscola, or any county lying north of those counties, including all of the counties of the Upper Peninsula; or St. Clair County.)

Under the bill, the county board of commissioners of an eligible county also could adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more State trunkline highways, other than interstate highways, located within the county.

At least 45 days before the board held a public hearing on the ordinance but after December 31, 2014, the county clerk would have to send notice of the hearing, by certified mail, to MDOT, the Michigan Department of State Police (MSP), and, if State forestland were located in the county, to the DNR. The notice to MDOT and the MSP would have to solicit those Departments' comments on environmental and public safety issues related to the proposed ordinance. The county board would have to consider the comments, and work with local ORV groups to address concerns the comments raised.

In addition, by May 1, 2014, MDOT would have to authorize the operation of ORVs on the maintained portion of a State trunkline highway, other than an interstate highway, on all or part of at least 10 State trunkline highways in the Upper Peninsula and at least five in eligible counties in the Lower Peninsula. Before designating the highways, MDOT would have to solicit and consider comments from ORV user groups in both peninsulas.

A county board or MDOT could authorize operation of an ORV only on a stretch of State trunkline highway that met at least one of the following criteria:

- Served as a connector between ORV areas, routes, or trails designated by MDOT or an ORV user group.
- Provided access to tourist attractions, food service establishments, fuel, or other services.
- Served as a connector between two segments of the same road that ran along discontinuous town lines.
- Included a bridge that allowed an ORV to cross a stream, wetland, or gully that was not crossed by a road or street on which ORVs were authorized to operate.

The bill would include references to an ORV operated on a State trunkline highway in provisions that govern the operation of an ORV on a road or street, such as provisions that set speed limits and require operation with the flow of traffic.

Part 811 provides that a township that has authorized the operation of ORVs on a road does not have a duty to maintain the road in a condition reasonably safe and convenient for the operation of ORVs. A board of county road commissioners, a county board of commissioners, or a municipality does not have a duty to maintain a road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except those registered as motor vehicles and those permitted by a municipal ordinance allowing a permanently disabled person to operate an ORV. Under the bill, these provisions also would apply to a county that authorized the operation of ORVs on a State trunkline highway, as well as the State.

#### Closure of Road to ORV Operation

Part 811 allows a board of county road commissioners to close a road to the operation of ORVs otherwise authorized under a county or township ordinance to protect the environment or in the case of a demonstrable threat to public safety. A county road commission may not close more than 30% of the linear miles of roads located within the county to ORV operation. The bill would refer to the linear miles of roads located within a township, rather than the county.

The bill would allow MDOT to close a State trunkline highway to the operation of ORVs otherwise authorized by a county ordinance by written notice to the county clerk and the Senate committees with primary responsibility for natural resources, recreation, and transportation. The notice would have to be sent by first-class U.S. mail or delivered personally within 30 days after the ordinance was adopted. The notice would have to set forth specific reasons for the closure.

#### Penalties for Violation

A violation of an ORV ordinance is a municipal civil infraction. The ordinance may provide for a maximum fine of \$500 for a violation. In addition, the court must order the defendant to pay the cost of repairing any damage to the environment,

or to a road or street or public property. Under the bill, these penalties also would apply to a person who committed a violation while operating an ORV on a State trunkline highway under a county ordinance.

The treasurer of the local unit of government must deposit the fines and damages collected for violations into a local ORV fund. The local unit's legislative body must appropriate revenue in the fund as follows:

- Fifty percent to the county sheriff or police department responsible for law enforcement in the local unit of government, for ORV enforcement and training.
- Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance, for repairing damage and posting signs regarding the operation of ORVs.

The bill provides that if a fine were collected for a violation of a county ordinance authorizing ORV operation on a State trunkline highway, 50% of the fine revenue would have to be appropriated to MDOT, rather than the board of county road commissioners or a municipal department.

Under the bill, a person who violated an MDOT rule or order related to the operation of an ORV on a designated State trunkline highway would be responsible for a State civil infraction and could be ordered to pay a maximum civil fine of \$500. In addition, the court would have to order the defendant to pay the cost of repairing any resulting damage to the environment, the highway, or public property.

#### License Exceptions; Free ORV-Riding Days

Except as otherwise provided, Part 811 prohibits a person from operating an ORV under any of the following conditions, unless the ORV is licensed with the DNR or a dealer:

- On or over land, snow, ice, or other natural terrain.
- On a forest trail or in a designated area.
- On the maintained portion of a road or street.

The bill would refer to the maintained portion of a highway, rather than a road or street.

Under the bill, licensure would not be required on a free ORV-riding day. The DNR would have to designate one Saturday and the following Sunday each year as free ORV-riding days. In addition, the Department could designate one other day or two consecutive other days as free ORV-riding days. The free ORV-riding days would have to correspond to free fishing days designated by the Department under Section 43534 of the Act. A person operating an unlicensed ORV during a free ORV-riding day would have the same privileges and be subject to the same rules and regulations as a person operating a licensed ORV.

(Under Section 43534, the DNR must designate a Saturday and the following Sunday during January or February of each year as free winter fishing days, and may designate an additional one or two days per year as free fishing days. During these days, a person may fish for all species in waters designated by the Department without purchasing a license or permit.)

In addition, an ORV would not have to be licensed in Michigan if it were licensed in another state and were operated in Michigan only in Gogebic, Iron, Dickinson, and Menominee Counties south of U.S. Route 2.

An ORV also would not have to be licensed if and to the extent that the DNR waived the licensure requirement for Department-sponsored events or other circumstances as determined by the Director or his or her designee.

#### ORV Events

Under Part 811, a special event involving ORVs may be conducted on the frozen surface of public waters only under a permit from the DNR. Under the bill, the DNR could not require a permit for such an event or an ORV event on State-owned land that involved 75 or fewer ORVs, unless the event conflicted with rules that were not specifically related to ORV events. The DNR could require the event organizer to give sufficient advance notice to allow the Department to coordinate the event with other ORV-riding activity to minimize conflicts.

#### Culvert or Bridge

The bill would allow an ORV to be operated on the roadway or shoulder when necessary to cross a culvert or bridge, other than the Mackinac Bridge, if the ORV were brought to a complete stop before entering onto the roadway or shoulder and the driver yielded the right-of-way to an approaching vehicle on the highway.

#### Risks of ORV Riding

The bill provides that each person who participated in the sport of ORV riding would accept the risks associated with that sport insofar as the dangers were obvious and inherent. The risks would include injuries to people or property resulting from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with fill material, decks, bridges, signs, fences, trail maintenance equipment, or other ORVs. The risks would not include injuries to people or property resulting from another person's careless or negligent ORV use likely to endanger people or property. When an ORV was operated in the vicinity of a railroad right-of-way, each person would assume additional risks, including entanglement with railroad tracks, switches, and ties, and collisions with trains and train-related equipment and facilities.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill could have an indeterminate fiscal impact on both the Department of Transportation and local road agencies. The cost to MDOT to make repairs to highways caused by ORVs could far exceed the potential revenue that would be generated by the proposed fines. The potential costs to MDOT depend on the number of county boards of commissioners that ultimately adopted an ordinance allowing the operation of ORVs on highways, as well as the extent to which MDOT authorized the operation of ORVs on State highways.

The bill also could place additional costs on local road agencies associated with environmental and incidental road damage caused by the use of ORVs on highways. Although local agencies are reimbursed by MDOT for particular maintenance and road repair costs they incur, the Department reimburses only a certain percentage of those costs, depending on the amount appropriated for those reimbursements in the Department's annual budget. If the costs to local agencies exceed the amount reimbursed by MDOT, the local agencies must absorb that cost. The potential cost to local road agencies depends on the number of county boards of commissioners that ultimately adopted an ordinance allowing the operation of ORVs on highways.

The bill would likely have a minimal effect on the amounts received for ORV licenses by the Department of Natural Resources (DNR). It is likely that residents of Michigan who own ORVs already purchase annual licenses for them, as the licenses are a relatively small marginal cost when compared to the cost of fuel, maintenance, and insurance and the fixed cost of acquisition of an ORV. It is likely, then, that the only impact the bill would have on the DNR is that people from out of State could come and use Michigan's trails for free on free ORV riding days. The amount of revenue lost would likely

be small, however, as many of the out-of-State ORV users who would take advantage of the free ORV riding days would likely not purchase an annual ORV license otherwise.

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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.