

# Legislative Analysis



## **ALLOW OHV ORDINANCES IN ALL COUNTIES AND ALLOW OHVs ON STATE HIGHWAYS; REDUCE ROAD COMMISSION AUTHORITY TO CLOSE ROADS TO OHVs**

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### **House Bill 6162**

**Sponsor: Rep. Bill Caul**

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

**Complete to 6-1-10**

### **A REVISED SUMMARY OF HOUSE BILL 6162 AS INTRODUCED 5-12-10**

In general, the bill would amend Part 811 (Off Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act to do the following things:

- Allow every county in Michigan (and municipalities and townships within every county) to adopt an ordinance authorizing the operation of off-road recreation vehicles or ORVs (to be renamed "OHVs" or *off-highway* recreation vehicles) on the far right of the maintained portion of roads, including road shoulders. (Currently only specified counties in central and northern Michigan are eligible to adopt an ordinance allowing off-road vehicles on roadways under Public Act 240 of 2008 and Public Act 175 of 2009, and the law does not currently specifically refer to road shoulders.)
- Authorize the State Transportation Commission to open state highways and highway shoulders to OHV travel.
- Eliminate the current sunset or expiration date of July 16, 2013, for ORV ordinances.
- Prohibit the State Transportation Commission or a county, township, or municipality from charging a fee for operating an OHV on an open highway, road, or street.
- Specify that the highways, streets, or roads covered by ordinances include any that pass through or along federal land if more than 50 percent of the funds used to maintain the road come from state or local sources.
- Reduce the percentage of linear miles of county roads that a road commission may close under a county or township ordinance from not more than 30 percent to not more than 10 percent, and change the standard for closure from "to protect the environment or if the operation of ORVs...poses a demonstrable threat to public safety" to "if OHV usage has created a significant threat to public safety or extraordinary damage to the environment or a road, including the shoulder of a road."
- Retain the requirement found in Section 81131 that, as of January 1, 2010, no person may operate an OHV under that section (that is, on roads or streets opened by OHVs by a county, township, or municipal ordinance or on a highway opened to OHVs by the state transportation commission) without a lighted headlight and taillight, but exempt people who operate an OHV in an organized OHV event between the hours of sunrise and sunset.
- Remove the general requirement found in Section 81133 that requires anyone operating an OHV to have a lighted headlight and lighted taillight between the hours

- of 1/2 hour after sunset to 1/2 hour before sunrise. (As described below, the section being deleted, Section 81133(1)(c), applies more broadly than the section being retained.)
- Specify that every person who participates in "the sport of OHV operations" accepts associated risks that are obvious and inherent.
  - Classify the failure to wear a helmet when operating an OHV as a state civil infraction, subject to a fine of at least \$250 but not more than \$1,000. (Currently, an operator's failure to wear a helmet is a state civil infraction with a maximum fine of \$500. It is unclear under the bill what the fine would be for an operator who allows a passenger to ride without a helmet or eye protection.)
  - Specify that a legal guardian, parent, owner, or person in charge who failed to properly supervise the use of an OHV by a child in violation of Section 81129 would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine (not less than \$250 or more than \$1,000) or both prison and a fine, for each violation. (Failure to supervise is currently a misdemeanor with a maximum fine of \$1,000. The bill would raise the applicable minimum fine from \$50 to \$250.)
  - Revise fines applicable to other OHV violations.
  - Reduce some OHV violations from misdemeanors to state civil infractions (operating an OHV on a non-abandoned railroad or railroad right-of-way or on a public utility right-of-way, and operating an OHV in or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure).

#### **DETAILED SUMMARY:**

Municipal ordinances; disabled persons. Currently, under Section 81131(1), a municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality. The bill would change "ORV" to "OHV" in this section.

County ordinances. Current Section 81131(2) authorizes the board of commissioners of an eligible county to adopt an ordinance allowing the operation of ORVs on the maintained portion of one or more roads located within the county, and prescribes the notices required before a hearing on the adoption of the ordinance. The authority of a county board of commissioners under this provision is subject to authority given to the county road commission and to townships to close roads under 81131(4) and a sunset provision found in Section 81131(7), making any ordinance automatically expire on July 16, 2013.

The bill would change "ORV" to "OHV," and specify that that the county ordinance could authorize the operation of OHVs on the maintained portion of one or more roads within the county, *including the shoulders of those roads*, and eliminate the reference to an "eligible county." As described below, the bill would allow all counties in the state, not just currently eligible counties, to adopt OHV ordinances.

The bill would also prohibit a county from charging a fee for the operation of OHVs on county roads, and define the phrase "road located within the county" as including "any

road passing through or along federal land located within that county if more than 50% of the funds used to maintain the road come from state or local sources." County ordinances would no longer be subject to the sunset provision. Instead they would be subject the authority given the State Transportation Commission to open state highways to OHVs.

Township ordinances. Current Section 81131(3) authorizes a township board in an eligible county to adopt an ordinance allowing the operation of ORVs on the maintained portion of one or more roads located within the township, and prescribes the required notices for a public hearing on the ordinance. A township board's authority under this provision is subject to the closure authority given to county road commissions under 81131(4) and a sunset provision found in Section 81131(7), making any township ORV ordinance automatically expire on July 16, 2013.

The bill would change "ORV" to "OHV," specify that that the township ordinance could authorize the operation of OHVs on the maintained portion of one or more roads within the township, including the shoulders of those roads, and eliminate the reference to an "eligible county."

The bill would also prohibit a township from charging a fee for the operation of OHVs on county roads, and define the phrase "road located within the township" as including "any road passing through or along federal land located within that county if more than 50% of the funds used to maintain the road come from state or local sources."

In current Section 81131(4), a township board located in an eligible county may adopt an ordinance to close a road to the operation of ORVs that was opened under a county ordinance. The bill would retain this provision but change ORV to OHV and eliminate the reference to an eligible county.

County road commissions. Under current Section 81131(4), the board of a county road commission may close not more than **30 percent** of the linear miles of roads located within a county to the operation of ORVs under a county or township ORV ordinance. The bill would only allow a road commission to close not more than **10 percent** of the linear miles of roads to OHVs under a county or township OHV ordinance. Currently, the road commission may close a road ***"to protect the environment or if the operation of ORVs under [a county or township ordinance] poses a particular and demonstrable threat to public safety."*** Under the bill, a road commission could only close a road ***"if OHV usage has created a significant threat to public safety or extraordinary damage to the environment or a road, including the shoulder of a road."***

Municipal ordinances. Under current Section 81131(5), the legislative body of a municipality located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more streets within the municipality, subject to a July 16, 2013, sunset date, after which municipal ORV ordinances automatically expire. The bill would change "ORV" to "OHV," specify that that the maintained portion of one or more streets would include the shoulders of those streets, and eliminate the reference to an "eligible county."

As in the county and township provisions, the bill would prohibit a municipality from charging a fee for the operation of OHVs on municipal streets, and define the phrase "streets within the municipality" as including "any street passing through or along federal land located within that county if more than 50% of the funds used to maintain the road come from state or local sources."

Current restrictions under county, township, and municipal ordinances. Currently, subject to the closure authority of the county road commission and townships and the July 16, 2013, sunset provision, if a local unit of government adopts an ORV ordinance, a person may 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. The bill would change "ORV" to "OHV" and specify that the OHV could be operated with the flow of traffic on the far right of the maintained portion of the road or street covered by the ordinance, ***including the shoulder of that road or street.*** The bill would also change "ORV" to "OHV" in provisions that (1) prohibit the operation of an ORV at a speed greater than 25 miles per hour or a lower posted speed or in a manner that interferes with traffic on the road or street, and (2) prohibit a person from operating an ORV registered as a motor vehicle and that was either three-wheeled or more than 60 inches wide under a county, township, or municipal ordinance unless the person had a license under Section 25 of the Michigan Vehicle Code, MCL 257.25 (meaning driving privileges under a driver license, temporary instruction permit, or temporary license). The bill would also change "ORV" to "OHV" in a provision requiring ORVs being operated on roads and streets to travel single file except during overtaking or passing.

Eliminate sunset provision. Under current Section 81131(7), the provisions authorizing and dealing with county, township, and municipal ORV ordinances and any ordinances adopted under those provisions do not apply after July 16, 2013. The bill would remove this sunset provision.

OHVs on state highways. Section 81131(7), as amended by the bill, would authorize the State Transportation Commission to authorize the operation of OHVs on any highway or portion of a highway in this state, including the shoulders of those highways. The designation could be made on a permanent, seasonal, or temporary basis. The State Transportation Commission could not charge a fee for the operation of OHVs on those highways. A person operating an OHV on a highway or portion of a highway would be subject to the same requirements described above: (1) the person could operate an OHV with the flow of traffic on the far right of the maintained portion of the highway; (2) the OHV could not be operated at a speed greater than 25 miles per hour or a lower posted speed or in a manner that interfered with traffic; (3) a person could not operate an ORV that was registered as a motor vehicle and that was either three-wheeled or more than 60 inches wide under a county, township, or municipal ordinance unless the person had a license under Section 25 of the Michigan Vehicle Code, MCL 257.25 (meaning driving privileges under a driver license, temporary instruction permit, or temporary license); and (4) OHVs would have to travel single file except during overtaking or passing. The phrase "highway or portion of a highway in this state" would include any highway or portion of a highway passing through or along federal land located within Michigan if

more than 50 percent of the funds used to maintain the highway or portion of a highway come from state or local sources.

Headlights and taillights. Currently, in addition to any requirements found in Section 81133(c) that apply to the operation of ORVs in general, ORVs must not be operated under a county, township, or municipal ordinance when weather conditions have substantially reduced visibility without displaying a lighted headlight and lighted taillight; beginning January 1, 2010, a lighted headlight and lighted taillight must be displayed at all times. The bill would change "ORV" to "OHV" and ***provide an exception to the requirement of a lighted headlight and taillight for people operating OHVs in an organized OHV event between the hours of sunrise and sunset.***

In addition, the bill would remove the general rule found in Section 81133(c)(which applies to ORVs even when they are not being driven on roadways under ORV ordinances) that prohibits operation of an ORV during the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight. Among other things, removal of this provision would appear to allow OHVs to be operated on private property, on public trails, and to cross streets and roads (even in counties, townships, and municipalities that do not have roads and streets open to OHVs) after dark without lighted headlights or taillights.

Minors. The bill would change "ORV" to "OHV" in an existing provision prohibiting a person under 18 years of age from operating an ORV under an ORV ordinance unless the person possessed a valid driver license or was under the direct supervision of a parent or guardian and the person had 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. The bill would also change "ORV" to OHV in the provision prohibiting a person under the age of 12 from operating an ORV under this section.

Duty to maintain roads, streets, and highways. The bill would include the state and its highways in a provision that specifies that local units of government allowing the operation of ORVs on their roads or streets have no duty to maintain the roads or streets in a condition reasonably safe and convenient for the operation of ORVs except for ORVs registered as motor vehicles and those operated by permanently disabled persons under a municipal ordinance. The bill would also change "ORV" to "OHV" in this subsection.

Immunity for ordinary negligence. The bill would add the State of Michigan to a provision that provides the board of a county road commission, a county board of commissioners, a county, or a municipality (but apparently not a township) immunity from tort liability for injuries or damages sustained by any person arising in any way out the operation or use of an ORV on maintained or unmaintained roads, streets, shoulders, and rights-of-way under its jurisdiction. This section does not apply to actions that constitute gross negligence, meaning conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.



Prima facie negligence. Currently, when an ORV being operated under a county, township, or municipal ordinance collides with a vehicle permitted to operate on a road or street under the Michigan Vehicle Code, the ORV is considered prima facie negligent. The bill would extend this provision to an ORV being operated on a highway open for OHV use.

Eligible county. Currently only eligible counties (and townships and municipalities within eligible counties) may adopt ORV ordinances. Eligible counties are Mason, Lake, Osceola, Clare, Gladwin, Arenac, or Bay County or a county lying north of those counties, including all of the counties of the Upper Peninsula as well as Huron, Tuscola, Sanilac, Saginaw, Gratiot, Montcalm, and St. Clair counties. The bill would delete the "eligible county" provision and all references to "eligible counties" with the effect that any county in the state (and any township or municipality within any county) could adopt an OHV ordinance.

Assumption of risk. The bill would add a new provision that specifies that each person who participates in "the sport of OHV operations" accepts the risks associated with that sport" to the extent that the dangers were obvious and inherent: "Those risks include, but are not limited to, injuries to person or property that can result 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 signs, fences, or other OHVs or train maintenance equipment. Those risks do not include injuries to persons or property that can result from the use of an OHV by another person in a careless or negligent manner likely to endanger person or property. When an OHV is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of OHV operations additionally assumes risks including, but not limited to, entanglement with tracks, switches, and ties and collisions with trains and other equipment and facilities."

Penalty for failure to wear helmet. Currently, Section 81113(b) prohibits the operation of an ORV unless the operator and any passenger is wearing a crash helmet and protective eyewear approved by the federal Department of Transportation, unless the vehicle has a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a safety belt. Under current Section 81147(3), a violation of Section 81113(b) is considered a civil infraction for which a civil fine of not more than \$500 may be ordered. Under the bill, the helmet and protective eyewear requirement provision would be retained but renumbered Section 81113(1)(b), and a new fine provision would be added to the bill. Under the new fine provision (Section 81147(2)), a person who operates an OHV without wearing a crash helmet in violation of Section 81133(1)(b) would be responsible for a state civil infraction and fined not less than \$250 or more than \$1,000 for each violation. [Note, also, that a reference to Section 81133(b) found on page 34, line 22 should probably be eliminated as that section would no longer exist having been renumbered section 81113(1)(b), but, if this is done, the bill may need clarification as to what consequences are intended to apply to a violation of a requirement found in the new Section 81113(1)(b), other than an operator failing to wear a helmet which is addressed in the new Section 81147(2). It is unclear under the bill what fine is intended under the bill for an operator who violates the protective eyewear requirement

of Section 81113(1)(b) or who carries a passenger who does not wear a helmet or protective eyewear.]

Failure to supervise child. A legal guardian or parent or an owner or person in charge of an OHV who failed to properly supervise the use of an OHV by a child in violation of Section 81129 would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine (not less than \$250 or more than \$1,000), or both imprisonment and a fine, for each violation. Currently, the penalty for failing to properly supervise appears to be the default provision found in Section 81147(1), which makes any violation of Part 811, except as otherwise provided, a misdemeanor punishable by imprisonment for not more than 90 days, a fine of not less than \$50 or more than \$1,000, or both, for each violation. Thus, the bill would apparently make no change to the existing penalty for a violation of this provision except to raise the minimum fine from \$50 to \$250.

Other violations. Section 81147(4), a new provision added by the bill, would make operating an OHV in violation of several provisions in Section 81133 a state civil infraction subject to a fine of not less than \$250 or more than \$1,000 for each violation. For some of these violations, the bill would add or increase an applicable minimum or maximum fine. In two instances, the bill would apparently decriminalize violations, making them civil infractions rather than misdemeanors:

- Section 81133(1)(e) (current Section 81133(f)): ***Operating an OHV on the frozen public waters*** within 100 feet of a person not in or on a vehicle, or within 100 feet of a fishing shanty or a skating area except at the minimum speed required to maintain controlled forward movement, or as may be authorized by permit in a special event. Currently, a violation of Section 81131(f) is a state civil infraction subject to a maximum fine of \$500 (with no specified minimum) under Section 81146(3) (to be renumbered 81146(6) in the bill). Thus, the bill would establish a minimum fine where none currently exists and double the maximum fine from \$500 to \$1,000.
- Section 81133(1)(i) (current Section 81133(j)): ***Operating an OHV in an area on which public hunting is permitted*** during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., with numerous exceptions. Currently, a violation of Section 81133(j) is a state civil infraction subject to a maximum fine of \$500 (with no specified minimum) under Section 81146(3)(to be renumbered 81146(6) under the bill). Thus, the bill would establish a minimum fine where none currently exists and double the maximum fine from \$500 to \$1,000.
- Section 81133(1)(l) (current Section 81133(m)): ***Operating an OHV within 1000 feet of a slide, ski, or skating area***, unless the vehicle was being used to service the area or was being operated under a county, township, or municipal ORV ordinance opening a road or street to OHV travel. Currently, a violation of Section 81133(m) is a state civil infraction subject to a maximum fine of \$500 (with no specified minimum) under Section 81146(3) (to be renumbered 81146(6) under the bill). Thus, the bill would establish a minimum fine where

none exists currently and double the maximum fine from \$500 to \$1,000 for a violation of this provision.

- Section 81133(1)(m)(current Section 81133(n)): ***Operating an OHV on a railroad or railroad right-of-way that is operating or nonabandoned, or on a public utility right-of-way***, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, with certain exceptions. Currently, there is no specified consequence for violating Section 81133(n), so a violation of this provision is a considered a misdemeanor under Section 81147(1), punishable by imprisonment for not more than 90 days or a fine of not less than \$50 or more than \$1,000, or both imprisonment and a fine, for each violation. The bill would decriminalize a violation of this provision, making it a civil infraction rather than a misdemeanor, meaning no imprisonment could be imposed for a violation. The minimum fine, now considered civil, would be raised from \$50 to \$250. The maximum fine would remain at \$1,000. Among other things reducing this violation from a misdemeanor to a civil infraction would also prevent the person's vehicle from being impounded under current Section 81147(6) (to be renumbered Section 81147(9) in the bill) simply because he or she violated a provision that is punishable as a misdemeanor, but if the person caused damage, his or her OHV could still be impounded because of the damage.
- Section 81133(1)(n)(current Section 81133(o)): ***Operating an OHV in or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure***. Currently, a violation of Section 81133(o) is considered a misdemeanor under Section 81147(2) (to be renumbered Section 81147(5)) and is punishable by imprisonment for not more than 90 days or a fine (minimum \$250, maximum \$1,000), or both imprisonment and a fine, for each violation. The bill would decriminalize a violation of this provision, making it a civil infraction rather than a misdemeanor. No prison term could now be imposed for a violation. The minimum fine of \$250 and maximum fine of \$1,000 would be retained, but classified as civil fines. Among other things, reducing this violation from a misdemeanor to a civil infraction would also prevent the person's vehicle from being impounded under current Section 81147(6) (to be renumbered Section 81147(9) in the bill) simply because he or she violated a provision that is punishable as a misdemeanor, but if the person caused damage, his or her OHV could still be impounded because of the damage.

Other ORV references. The bill also changes "ORV" to "OHV" in many other existing provisions in Part 811.

Tie-bars. The bill is tie-barred to House Bills 6159, 6160, & 6161, meaning that it would not take effect unless each of those bills was enacted into law.



## **FISCAL IMPACT:**

House Bill 6162 would have an indeterminate fiscal impact on state and local government. The provisions of the bill would expand the use of OHVs statewide and allow OHVs on state highways. Moreover, it would reduce the percentage of county roads closed to OHVs to 10 percent. If a local government were to allow for the operation of OHVs on local roads, fines for violations of OHV ordinances and court-ordered repair costs for environmental and road damage would be directed to the "OHV fund" to be divided equally between law enforcement and road commissions for enforcement and for road repairs and signs. An accurate estimate on the amount of fine revenue in the OHV fund cannot be determined with any accuracy at this time. The fiscal impact to the fund would be dependent upon the number of violations under the ordinances.

Moreover, expanding the use of OHVs statewide on public roads would presumably increase the incidents of other violations (both misdemeanors and state civil infractions) under the Natural Resources and Environmental Protection Act. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries. The costs imposed by an increase in the caseload for any court would presumably be offset by defendant court costs.

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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.