

State of Michigan County of Oceana Township of Colfax ORV Ordinance

An ordinance authorizing and regulating the operation of Off Road Vehicles (ORVs) on county primary and county local roads in Colfax Township, Oceana County, providing penalties for the violation thereof, and for the distribution of fines and costs resulting from those penalties pursuant to 2009 PA 175, MCL 324.81131.

THE TOWNSHIP OF COLFAX ORDAINS:

1, Definitions

- a "Township" means the Township of Colfax, Oceana County.
- b. "County" means Oceana County.
- c. "Driver License" means an operator's or chauffeur's license or permit issued to an individual by the secretary of state under chapter III of the Michigan vehicle code, 1949 PA 300, MCL 257.301 to 257.329, for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.
- e "Maintained portion" means that portion of a road improved, designated or ordinarily used for vehicular traffic, including the gravel shoulder or paved shoulder of the road.
- f. "Operate" means to ride in or on, and be in actual physical control of the operation of an ORV.
- g. "Operator" means a person who operates or is in actual physical control of the operation of an ORV.
- h. "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, golf cart or related 2-wheel, 3-wheel, or 4-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.
- i. "Road" means a County primary road or County local road as described in section 5 of 1951 PA 51, MCL 247.655.
- j. "Road Commission" means the Board of County Road Commissioners for the County of Oceana.
- k "Safety Certificate" means a certificate issued pursuant to 1994 PA 451 as amended, MCL 324.81129, or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.
- l. "Visual Supervision" means 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.
- m. "Township Board" means the Township Board of Colfax Township.

3. No Township Duty to Maintain County Roads

- a. Despite the terms of this Ordinance allowing ORVs to use portions of County Roads, the Township has no duty to, and undertakes no duty to, maintain a Road within its boundaries in a condition reasonably safe and convenient for the operation of ORVs.

4. Enforcement

- a. A violation of this ordinance is a municipal civil infraction, and a responsible person shall pay a fine of not more than \$500.00. In addition a court may order the defendant to pay the cost of repairing any damage to the environment, a road, or public property damaged as a result of the violation.
- b. The Township Treasurer shall deposit fines and damage costs collected under this ordinance and under applicable provisions of the Revised Judicature Act, MCL 600.8379, into a fund designated as the "ORV Fund.
- c. The Township Board shall appropriate revenue in the ORV fund as follows:
 1. Fifty percent to the Township ORV Fund to be distributed to the Oceana County Sheriffs Department or to be distributed to a Township fund to cover the costs of the Township Constable, or to both, responsible for ORV enforcement and training.
 2. Fifty percent to the Oceana County Road Commission for repairing damage to roads or streets and the environment that may have been caused by ORV's and for posting signs indicating ORV speed limits or indicating whether roads or streets are open or closed to the operation of ORVs under this ordinance, within Colfax Township.

5. Evidence.

- a. In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road pursuant to state law was in a collision with an ORV required to be operated on the far right of the maintained portion of the road pursuant to this ordinance, the operator of the ORV shall be considered prima facie negligent

6. Effective Date

- a. This ordinance shall be effective 30 days after its first publication. The ordinance will be reviewed one year after its effective date to determine its continuation.

This ordinance is adopted by action of the Colfax Township Board this __5th__ day of __Feb 2013__

COLFAX TOWNSHIP
RESOLUTION NO. 205-2013 D

BE IT RESOLVED THAT COLFAX TOWNSHIP ADOPT THE ORV
ORDINANCE.

THE RESOLUTION WAS OFFERED BY BOARD MEMBER ___Larry B___ AND
SUPPORTED BY BOARD MEMBER ___Louise B____.

YEAS; Larry M, Larry B, Louise B, Carol C, Barb G

NAYS: none

RESOLUTION DECLARED ADOPTED: _____

A large, stylized handwritten signature in black ink, likely belonging to a township official, is written over the line for the resolution declaration.

Ordinance

Colfax

2. Operation of ORVs on County Roads

- a. An individual may operate an ORV on a Road within the Township provided that the ORV is operated only with the flow of traffic, on the far right of the maintained portion, of the Road, subject to the following additional regulations:
- b. A person shall not operate an ORV at a speed greater than 25 miles per hour, or a lower posted ORV speed limit or in a manner that interferes with traffic on the Road.
- c. ORVs shall travel single file, except when passing or being passed by another ORV.
- d. All ORVs operating must have a lighted headlight and taillight.
- e. Unless a person possesses a Drivers License, a Person shall not operate an ORV on a Road if the ORV is registered as a motor vehicle under the Michigan Vehicle Code and the ORV is either more than 60 inches wide or has three wheels,
- f. A person under the age of 16 shall not operate an ORV on a Road.
- g. A person under the age of 16 shall not operate an ORV on a Road unless the person is in possession of a valid Driver's License or is under the direct supervision of a parent or guardian and the Person has in his possession an ORV Safety Certificate issued by Michigan, another state, or a province of Canada,
- h. All operators must, upon demand by a law enforcement officer, present either an ORV Safety Certificate or Drivers License.
- i. An owner or person in charge of an ORV shall not allow an ORV to be operated by an individual who is incompetent to operate a vehicle because of mental or physical disability, j. A child less than 16 years of age shall not operate a 3-wheeled ATV.
- k. A person shall not operate an ORV at a rate of speed greater than is reasonable and proper, or in a careless manner having undue regard for conditions.
- l. A person shall not operate or ride on an ORV unless they are wearing on their head a helmet and protective eyewear approved by the United States department of transportation. This section does not apply if the vehicle is equipped with a roof that meets or exceeds standard for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt,
- m. A person shall not operate an ORV without a braking system.
- n. A person shall not operate an ORV during the hours of 1/2 hour after sunset and 1/2 hour before sunrise without a working brake light that is brighter than the taillight.
- o. All ORVs shall conform to the noise emission levels established by the United States environmental protection agency under the noise control act of 1972, 42 USC 4901 to 4918.
- p. No person shall transport a passenger on an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers
- q. No person shall operate an ORV with an opened container of alcohol unless it is in a trunk, separate compartment or is encased or enclosed,
- r. The ORV is equipped with a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle,
- s. The ORV is equipped with a spark arrester type United States Forest Service approved muffler in good working order and in constant operation,
- t. An ORV shall otherwise be operated in full compliance with all applicable provisions of state law, including, but not limited to, Part 811 of the Natural Resources and Environmental Protection Act, MCL 324.81101, et seq.



SUE ANN JOHNSON
OCEANA COUNTY
ADMINISTRATOR/FISCAL OFFICER

P.O. Box 31, Hart, MI 49420
Phone (231) 873-4835
Fax (231) 873-5914

"This institution is an equal opportunity provider"

MEMORANDUM

TO: ALL TOWNSHIP CLERKS

FROM: SUE ANN JOHNSON, OCEANA COUNTY ADMINISTRATOR/FISCAL OFFICER *Y*

SUBJECT: ORV ORDINANCE

DATE: OCTOBER 17, 2011

Please be advised that the Oceana County Board of Commissioners, at its Regular Meeting of Thursday, October 13, 2011 accepted the recommendation of the Oceana County Planning Commission to not pursue a countywide ORV ordinance.

The Oceana County Board of Commissioners is not opposed to ORV use; rather, the Board feels that such a decision is best left to the individual townships for the following reasons:

- townships have the authority to adopt an ordinance authorizing ORV use;
- townships have the knowledge as to "needs and wants" of their constituents;
- townships have the knowledge as to which roads, if any, are suited to ORV use;
- a county-wide "one-size" fits all type of ordinance regarding ORVs is not practical as the east-side of the county differs substantially from the west side of the county

If you have any questions, please feel free to contact me.

Cc: Oceana County Board of Commissioners
✓Oceana County Road Commission
File



100TH DISTRICT
STATE CAPITOL
P.O. BOX 30014
LANSING, MI 48909-7514
PHONE: (517) 373-7317
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E-MAIL: jonbumstead@house.mi.gov

MICHIGAN HOUSE OF REPRESENTATIVES

JON BUMSTEAD
STATE REPRESENTATIVE

September 13, 2011

Dear Local Elected Official,

Larry

There has been much talk recently about the new changes to ORV regulations and access to road shoulders. With these changes comes a need to understand exactly what the law does and does not do.

Enclosed, please find a copy of Public Act 107 of 2011 along with a brief analysis for your review. Please feel free to contact if you have any questions or concerns about the new regulations.

Sincerely,

Jon

Jon Bumstead
State Representative
100th State House District

Act No. 107
Public Acts of 2011
Approved by the Governor
July 19, 2011
Filed with the Secretary of State
July 19, 2011
EFFECTIVE DATE: July 19, 2011

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Senators Booher, Pavlov, Meekhof and Marleau

ENROLLED SENATE BILL No. 371

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 81131 (MCL 324.81131), as amended by 2009 PA 175.

The People of the State of Michigan enact:

Sec. 81131. (1) A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(2) Subject to subsection (4), the county board of commissioners of an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within the county. Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to the county road commission and, if state forestland is located within the county, to the department.

(3) Subject to subsection (4), the township board of a township located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within the township. Not less than 28 days before a public hearing on the ordinance, the township clerk shall send notice of the public hearing, by certified mail, to the county road commission and, if state forestland is located within the township, to the department. This subsection does not apply to a township until 1 year after the effective date of the amendatory act that first defined eligible county so as to include the county in which that township is located.

(4) The board of county road commissioners may close a road to the operation of ORVs under subsection (2) or (3) to protect the environment or if the operation of ORVs under subsection (2) or (3) poses a particular and demonstrable threat to public safety. A county road commission shall not under this subsection close more than 30% of the linear miles of roads located within the county to the operation of ORVs under subsection (2) or (3). The township board of a township located in an eligible county may adopt an ordinance to close a road to the operation of ORVs under subsection (2).

(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 1 or more streets within the municipality.

(6) Subject to subsection (4), if a local unit of government adopts an ordinance pursuant to subsection (2), (3), or (5), 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. A person shall not operate an ORV pursuant to subsection (2), (3), or (5) at a speed greater

than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the road or street.

(7) Unless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV pursuant to subsection (2), (3), or (5) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 60 inches wide or has 3 wheels. ORVs operated pursuant to subsection (2), (3), or (5) shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

(8) A person shall not operate an ORV pursuant to this section without displaying a lighted headlight and lighted taillight.

(9) A person under 18 years of age shall not operate an ORV pursuant to this section unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129.

(10) A township that has authorized the operation of ORVs on a road under subsection (3) 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 the following ORVs:

(a) ORVs registered as motor vehicles as provided in the code.

(b) ORVs permitted by an ordinance as provided in subsection (1).

(11) Beginning October 19, 1993, a board of county road commissioners, a county board of commissioners, and a county are, and, beginning on April 25, 1995, a municipality is, immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of an ORV on maintained or unmaintained roads, streets, shoulders, and rights-of-way over which the board of county road commissioners, the county board of commissioners, or the municipality has jurisdiction. The immunity provided by this subsection does not apply to actions that constitute gross negligence. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(12) In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road or street pursuant to the code was 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 adopted under subsection (2), (3), or (5), the operator of the ORV shall be considered prima facie negligent.

(13) A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a maximum fine of not more than \$500.00 for a violation of the ordinance. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a road or street, or public property damaged as a result of the violation.

(14) The treasurer of the local unit of government shall deposit fines collected by that local unit of government under section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, and subsection (13) and damages collected under subsection (13) into a fund to be designated as the "ORV fund". The legislative body of the local unit of government shall appropriate revenue in the ORV fund as follows:

(a) Fifty percent to the county sheriff or police department responsible for law enforcement in the local unit of government for ORV enforcement and training.

(b) 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 in the city or village, for repairing damage to roads or streets and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether roads or streets are open or closed to the operation of ORVs under this section.

(15) As used in this section:

(a) "Eligible county" means any of the following:

(i) Oceana, Newaygo, Montcalm, Gratiot, Saginaw, Tuscola, or Sanilac county or a county lying north thereof, including all of the counties of the Upper Peninsula.

(ii) St. Clair county.

(b) "Local unit of government" means a county, township, or municipality.

(c) "Municipality" means a city or village.

(d) "Road" means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655.

(e) "Street" means a city or village major street or city or village local street as described in section 9 of 1951 PA 51, MCL 247.659.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

.....
Governor



Senate Fiscal Agency
P. O. Box 35000
Lansing, Michigan 48209-7500

BILL



ANALYSIS

Telephone (517) 373-6100
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Senate Bill 371 (Substitute S-2 as reported)
Sponsor: Senator Darwin L. Booher
Committee: Outdoor Recreation and Tourism

(as enrolled)

Date Completed: 6-2-11

RATIONALE

Public Act 240 of 2008 amended the Natural Resources and Environmental Protection Act to authorize local governments to adopt ordinances allowing the operation of off-road vehicles (ORVs) on road shoulders. The legislation applied to all the counties of the Upper Peninsula and to 28 counties in the northern Lower Peninsula. The measure was adopted to stimulate tourism in the eligible counties. Authorization to adopt ORV ordinances was extended to several counties in Michigan's "thumb" under Public Act 175 of 2009. Because of the economic benefits said to be associated with the ordinances, it has been suggested that several other counties be designated "eligible counties", and that a sunset on the authorization to adopt a local ORV ordinance be eliminated.

CONTENT

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

- **Eliminate a July 16, 2013, sunset on provisions authorizing eligible counties, and townships and municipalities within those counties, to adopt an ordinance allowing the operation of ORVs on road shoulders.**
- **Authorize additional counties to adopt such an ordinance.**
- **Provide that a township ORV ordinance would not take effect until one year after the county in which it was located became an eligible county.**

Part 811 allows the county board of commissioners of an eligible county, the township board of a township located in an eligible county, and the legislative body of a municipality (i.e., 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 roads located within the county, township, or municipality.

"Eligible county" means any of the following:

- Arenac, Bay, Clare, Gladwin, Lake, Mason, or Osceola County or a county lying north of those counties, including all of the counties of the Upper Peninsula.
- Gratiot, Huron, Montcalm, Saginaw, Sanilac, St. Clair, or Tuscola County.

The bill would include Isabella, Mecosta, Midland, Newaygo, and Oceana Counties as eligible counties.

Also, under the bill, the provisions authorizing a township ORV ordinance would not apply to a township until one year after the effective date of the legislation designating the county in which the township was located an "eligible county".

MCL 324.81131

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Recreational ORV use has increased in popularity in recent years, due partly to the expanded opportunities available under the local ordinances. In 2009, the State reportedly sold more ORV licenses than snowmobile permits. Users of these vehicles have a positive impact on the communities along the routes they travel, particularly small towns, by spending money on food, fuel, and hotels. Evidently, some local units of government have begun holding new community events in response to the increased traffic under the ORV ordinances. When the original legislation authorizing the ordinances was enacted, some people expressed concerns about potential safety hazards and damage to roads and natural resources from ORV use; since then, however, complaints have been minimal. Experience has shown that the benefits outweigh the drawbacks; thus, the sunset should be eliminated.

The additional eligible counties proposed by the bill could benefit from the recreational opportunities available to ORV users. Expanding ORV opportunities would give people from other parts of the State a reason to visit and spend money in these counties, and could increase real estate values by making property more attractive for vacation use. Additionally, residents of the specified counties could benefit from the creation of a more comprehensive ORV system. Many people who previously took advantage of the recreational opportunities in the eligible northern Michigan counties now cannot afford to do so. Extending eligibility to the counties specified in the bill would give those people more opportunities to use ORVs closer to home.

Response: The bill does not include some counties, such as Kent and Muskegon, that also could benefit from allowing ORV use along the roads. Perhaps the authorization to adopt ORV ordinances should be extended to these counties, or expanded statewide.

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 individuals would be found responsible for violating an ORV ordinance. To the extent that the bill

resulted in an increase or decrease in adjudications of responsibility, local governments' costs of enforcement and fine revenue could be affected.

Fiscal Analyst: David Zin

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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.