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## ORV TRAIL FUND

### House Bill 4979 as passed by the House Second Analysis (12-17-90)

Sponsor: Rep. Tom Alley  
Committee: Conservation, Recreation &  
Environment

#### ***THE APPARENT PROBLEM:***

Off-road vehicles (ORVs) have enjoyed increasing popularity within the past decade. However, the increased use of ORVs has resulted in complaints by property owners, environmentalists, businesses and others who are concerned about the negative effects of ORV use. House Bills 4827 (Public Act 71 of 1990) and 4547 (as passed by the House), and Senate Bill 176 (Public Act 56) have addressed some of the concerns expressed by various groups regarding the licensure of ORVs, the accident and injury rate of ORV users and the lack of available safety programs. However, the lack of designated trails and the maintenance of trails for ORV users still needs to be addressed.

#### ***THE CONTENT OF THE BILL:***

Public Act 71 of 1990 created the ORV Trail Improvement Fund within the state treasury for the signing, improvement, maintenance, and construction of ORV trails. The bill would amend the off-road vehicle act to specify that the ORV Trail Improvement Fund could also be used for ORV routes and for the administration and enforcement of the act. In addition, the bill would detail the way in which the fund should be spent and would clarify certain definitions and provisions within the act.

The ORV Trail Improvement Fund. Under the bill, at least 40 percent of the annual amount of the fund would be distributed in the form of grants to public agencies and nonprofit incorporated clubs and organizations for the planning, improving, constructing, signing and maintenance of ORV trails and the routes and access thereto, the agreements for the use of land for ORV trails, areas and routes, and the restoration of damage to natural resources on public land that is caused by ORV use. An application by an agency, club or organization would include a plan for restoration of the public land damaged due to ORV use. An entity applying for a grant would have to specify that the project was consistent with the Department of Natural Resources' plan and that the grant would be used to restore public land. Grants would not be approved unless the application met the requirements of the plan. Grants would be considered in consultation with the ORV Trails Advisory Committee. An allocation for the cost of leasing land and the acquisition of easements, permits, or other agreements could equal 100 percent of the incurred expense.

At least 30 percent of the annual amount in the fund would be used for enforcement of the act. The department would make grants available to the county sheriffs' departments from the 30 percent in the following amounts: 60 percent of the funds available for the first year of operation; 50 percent for the second year; and 40 percent for each year thereafter. The balance of the funds would be used by the department. The act currently prohibits money in the fund from being expended prior to April 1, 1991. The bill would specify that starting on April 1, 1991, money could only be expended from the fund for enforcement of the act and for restoration of damage to natural resources on

public land caused by ORV use until the comprehensive system for ORV use had been developed by the department and approved by the legislature.

Up to 5 percent of the annual amount of the fund could be used for administration of the act, and the remainder of the fund would be used for planning and maintenance of ORV trails and enforcement of the act's provisions, except that during the first year the remainder of the fund would be used for enforcement. Allocations made under the bill would be available until expended once a contract or commitment had been entered into under the bill. A contract would be in effect for up to two years, and a grant not expended within the contract period could be renewed by the department by entering into a new contract.

Management plan for ORV trails and routes. The bill would require the department to develop a comprehensive plan for the management of ORV use of areas, routes and trails by October 1, 1991. The act details the goals of the plan, and the bill would specify that the plan would include designation of areas, forest roads, and forest trails for use by handicappers. The bill would also require specifications for trails and areas. The plan would be revised every two years, and the plan and subsequent revisions would be submitted for approval to the House and Senate committees that consider natural resources matters. Within one year after the effective date of the bill, the department would designate an appropriate area in the northern lower peninsula and an appropriate area in southeast Michigan as a scramble area (an area where ORV users can ride their vehicles up and down hills). Copies of maps of trails would be available at county offices in each county and secretary of state branch offices.

ORV Trails Advisory Committee. The committee would be created within the department to assist the department in developing criteria for grants, nominating forest roads to be included as ORV routes, nominating trails, and assisting in developing rules and the ORV trail and route management plan. The committee would advise the department on recommendations made by ORV users of forest trails, roads, and areas that should be designated for ORV use. The committee would consist of six members appointed by the director of the DNR. Initial members of the committee would be appointed by April 1, 1991. Three of the members would represent ORV trail users and dealers. Two of the members would represent environmentalists, and one member would represent law enforcement. The committee would meet at least once per year.

Upper Peninsula Task Force. The provisions creating the ORV Trail Improvement Fund and detailing how the fund is to be spent and those regarding the ORV trail management plan, the ORV advisory committee, and the ORV system to be submitted to the legislature would not apply to the Upper Peninsula. However, the bill would create an Upper Peninsula Task Force on the use of

ORVs within 60 days after the effective date of the bill. The task force would consist of nine members and would meet at least twice annually during the years 1991, 1992, and 1993. The task force would evaluate the extent of ORV use in the U.P. and damage caused due to the use of ORVs. The task force would submit a report with its recommendations to the director of the DNR and the Natural Resources Commission by January 1, 1994.

ORV use system and closed unless posted open policy. The department would develop a comprehensive system for the use of ORVs on routes, trails, and areas in state forests which would be submitted to the legislature for review and approval before implementation. The legislature would approve the system with a specific effective date by concurrent resolution adopted by both standing committees of the House and Senate that consider natural resources matters and both houses of the legislature by recorded vote within 60 days after the system was submitted to the legislature. Once the system was approved, all state owned land under jurisdiction of the department would be closed to ORV use unless posted open. The bill would require the department to consider the needs of hunters, senior citizens, and handicappers when developing the system.

Titling of an ORV. The bill would increase the application fee for processing an ORV title or duplicate title from \$10.50 to \$11. Revenue collected from the fees would be used to support the administrative costs of the secretary of state's office. Excess revenue and unspent appropriations would be credited to the ORV Trail Improvement Fund. If the office was not satisfied as to the ownership of an ORV which was not a late model ORV and whose value did not exceed \$1,500, the office would require the applicant to certify ownership.

Penalties. The bill would prohibit removal, defacing, or destroying a sign or marker placed by the department indicating the boundaries of an ORV trail or area or that marked a route. The bill would specify that fines for violations of the act could range between \$100 and \$1,000. In addition to the penalties provided under the act, the department or any other law enforcement officer could impound the ORV of a person who violated the act. A court could also order condemnation and confiscation of an ORV and require the person to restore any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of the act to the condition that it was in before the violation occurred in the following situations: damage to the area caused by operation of the ORV in a reckless or imprudent manner; trespass into areas not permitted for ORV use; operation of an ORV while under the influence of intoxicating liquor or a controlled substance; and fleeing or eluding a police or conservation officer. A person would not violate a provision of the act and would not have an ORV impounded for a trespass if the trespass was the result of an emergency situation.

The act requires a purchaser or other transferee of an ORV to make application to the secretary of state's office for a title and details the application process. The bill would specify that a person who violated this provision would be responsible for a civil infraction.

Other provisions. Under the act, a county, city, village, or township may pass an ordinance establishing access routes along streets and highways under its jurisdiction. The bill would allow this to happen as long as the access routes met the requirements of the management plan and, where necessary, consent of a state or federal land management agency was obtained for the location of the route.

The act specifies areas in which operation of an ORV is prohibited. The bill would specify that the department could permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property. In addition, the bill would specify that handicappers using an ORV to access public lands during hunting and fishing seasons would be exempt from provisions prohibiting that action. Further, the bill would specify that operation of an ORV on an operating public utility right-of-way would be prohibited unless the right-of-way was designated under the trail system. The bill would also prohibit operation of an ORV on adjacent private land, in an area zoned residential within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except under certain conditions.

MCL 257.1601 et al.

## ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

## ***ARGUMENTS:***

### ***For:***

ORV use has increased dramatically during the past 15 years. ORVs have caused serious damage to the environment by creating erosion and by causing the introduction of trails into ecologically fragile areas. In order to address these problems the bill will establish more state trails in a timely fashion. In addition, the bill will help ensure that fragile areas are restored as closely to their natural state as possible. Further, the bill will allow ORV user groups and others to help develop trails and undertake trail improvement projects for existing trails. The bill will also create an advisory committee and a task force to monitor ORV usage and to convey public comment to the department and legislature regarding ORV use. All of these provisions will help ORV users to continue to enjoy their sport in a safe and environmentally sound manner.

### ***Against:***

Public comment is strongly urged regarding legislation of this nature because the legislation establishes a system that will probably be in effect for several years and will require public support and participation to be successful. However, the bill does not provide a mechanism by which the public may comment directly upon the implementation of its provisions.

***Response:*** The bill does include ample public comment opportunity through the advisory committee. One of the duties of the advisory committee is to take public comment from ORV users and others, to analyze it and to pass that information to the department. It is through this mechanism that the public could voice its concerns.

### ***Against:***

The Upper Peninsula should not be exempted from the legislation. The problems in the U.P. are just as important as those down state and should be given equal consideration. If the problems in the U.P. are not addressed now, they will continue to grow, and the legislature will still have to address them.

***Response:*** It is argued that the type of regulation proposed in the bill is not necessary for the U.P., as ORV use does not pose an environmental problem there. At any rate, the bill would allow the task force to make the necessary determinations regarding ORV use in the U.P.

***POSITIONS:***

The Michigan Soil Conservation Districts supports the bill. (12-17-90)

The Michigan United Conservation Clubs supports the bill. (12-17-90)

The Cycle Conservation Club supports the concept of the bill. (12-17-90)

The Michigan Environmental Council supports the concept of the bill, but feels that the exemptions provided in the bill are too broad and the implementation period is too lengthy. (12-17-90)

The Sierra Club - Mackinac Chapter supports the concept of the bill, but feels that the bill's exemptions are too broad and that the "closed unless posted open policy" should be implemented more quickly. (12-17-90)

The Independent Land Users Association, a group of ORV users, opposes the bill. (12-17-90)

The Michigan Motorcycle Dealers Association opposes the bill. (12-17-90)