

STORAGE NAME: h0103s1.ccc.doc
DATE: April 24, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/HB 103
RELATING TO: Off-Highway Vehicles
SPONSOR(S): Council for Competitive Commerce & Representative Russell
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
 - (2) FISCAL POLICY & RESOURCES YEAS 12 NAYS 0 (FRC)
 - (3) COUNCIL FOR COMPETITIVE COMMERCE YEAS 12 NAYS 0
 - (4)
 - (5)
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I. SUMMARY:

Council Substitute for House Bill 103 creates the "T. Mark Schmidt Off-Highway Vehicle Safety Recreation Act", which provides for the expanded, managed use of off-highway vehicles on public lands.

A 9-member Off-Highway Vehicle Recreation Advisory Committee is created within the Division of Forestry of the Department of Agriculture and Consumer Services (DACS) to:

- Establish policies to guide DACS regarding the off-highway vehicle recreational program and the system of off-highway vehicle recreation areas and trails;
- Make recommendations to DACS regarding off-highway vehicle safety, training, and rider-education programs;
- Review and make recommendations regarding DACS' proposed budget of expenditures from the trust fund;
- Make recommendations regarding all capital outlay expenditures from funds designated for the program; and
- Review grant applications requesting moneys from those funds designated for the program to create, operate, manage, or improve off-highway vehicle recreation areas or trails within the state.

CS/HB 103 provides rulemaking authority to DACS to implement the program and to the Department of Highway Safety & Motor Vehicles for off-highway vehicle titling and registration activities. The council substitute also provides a fee structure to be administered by the Department of Highway Safety and Motor Vehicles for titling and registration of off-highway vehicles

The fiscal impact of this legislation to the state is minimal but positive

This council substitute provides for an effective date for the act of October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government: The bill requires all off-highway vehicles that are used on public lands, with the exception of those that are owned by non-Florida residents, governmental entities, agricultural interests, and those rented for use from a franchisee of a public entity that controls the public beach, to be titled and registered by the Department of Highway Safety and Motor Vehicles. The bill also creates a 9-member Off-Highway Vehicle Advisory Committee within the Division of Forestry (division) of the Department of Agriculture and Consumer Services. The duties of the committee and the expanded duties of the division are listed in subsection C., Effects of Proposed Changes.

Lower Taxes: The bill assesses fees for titling and registering off-highway vehicles used on public lands.

B. PRESENT SITUATION:

The only facility on state land currently allowing off-highway vehicles is the Croom Motorcycle Area within the Withlacoochee State Forest. This facility is managed by the Department of Agriculture and Consumer Services' (DACS) Division of Forestry. The Croom Motorcycle Area sells annual permits for \$25. In 2000, approximately 13,250 permits were sold, totaling more than \$250,000.

Currently, the federal Recreational Trails Program (RTP) has matching funds available for off-highway vehicle recreation programs in each state. In the past three submission cycles, five projects totaling \$99,607 for improvements on the Croom tract have been funded. While more funds are available, the allocations for motorized use have been limited by the availability of matching funds, which have come from private users.

Off-highway vehicles are currently allowed on the United States Forest Service (USFS) lands, which include approximately 1.2 million acres in Florida. The USFS is currently addressing off-highway vehicle uses on these lands to balance use with resource protection. While the current practice allows motorized use unless posted, the goal is to limit additional trail development, motorized or non-motorized, and to consolidate existing trails.

C. EFFECT OF PROPOSED CHANGES:

Council Substitute for House Bill 103, to be cited as the "T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act" (act), creates the Off-Highway Vehicle Recreation Advisory Committee

(committee) within the Department of Agriculture and Consumer Services' Division of Forestry. The 9-member committee is to be composed of the following:

- 3 representatives of off-highway vehicle recreation groups,
- A licensed off-highway vehicle dealer,
- A citizen with scientific expertise in disciplines relating to ecology, wildlife biology, or other environmental sciences;
- A representative of the Department of Highway Safety and Motor Vehicles (DHSMV),
- A representative of the Department of Environmental Protection's Office of Greenways and Trails,
- A representative of the Florida Fish and Wildlife Conservation Commission, and
- A representative of DACS.

The committee is directed to accomplish the following:

- Establish policies to guide DACS regarding the off-highway vehicle recreational program and the system of off-highway vehicle recreation areas and trails;
- Make recommendations to DACS regarding off-highway vehicle safety, training, and rider-education programs;
- Review and make recommendations regarding DACS' proposed budget of expenditures from the trust fund;
- Make recommendations regarding all capital outlay expenditures from the trust fund; and
- Review grant applications requesting moneys from the trust fund to create, operate, manage, or improve off-highway vehicle recreation areas or trails within the state.

DACS duties, with regards to the act, will include the following:

- The planning, acquisition, development, construction, conservation, and rehabilitation of lands in and for the system;
- The management, maintenance, administration, and operation of lands in the system, and the provision of law enforcement and appropriate public safety activities;
- Management of the trust fund and approval of the advisory committee's budget recommendations;
- Implementation of the programs, including the ultimate approval of grant applications submitted by governmental agencies;
- Ensuring compliance with environmental laws and regulations of the programs and lands in the system;
- Implementation of the policies established by the committee;
- Staff assistance to the committee;
- Preparation of plans for lands in, or proposed to be included in, the system;
- Conducting surveys and the preparation of studies as are necessary or desirable for implementing the program;
- Recruitment and utilization of volunteers to further the program; and
- Publication and sale of a guidebook, which will include information regarding the responsibility of users of the system, pertinent laws, rules, and regulations, as well as other information.

The council substitute allows DACS to contract or enter into cooperative agreements with private persons or other public agencies for the care and maintenance of lands in the system, including law enforcement services. The bill amends s. 316.2074, F.S., redefining the term "all-terrain vehicle".

CS/HB 103 requires all off-highway vehicles owned by residents of the state for use on public lands to be titled and registered. An exemption for titling and registration is provided for non-Florida residents and governmental entities, and for registration of vehicle used for agricultural purposes and those rented for use from a franchisee of a public entity that controls the public beach. The administration of the titling and registering of the off-highway vehicles shall be the responsibility of DHSMV. The bill allows DHSMV to adopt rules and prescribe forms necessary for the titling and registering of off-highway vehicles.

The bill establishes a \$29 fee for applications for certificates of title and a \$25 fee for annual registration of an off-highway vehicle. Rates are also established for issuance of duplicate titles, registrations, and mail service handling fees. The bill also provides for the tax collector to retain a portion of the fee for each titling and registration transaction. DHSMV shall deposit all funds received for titling and registration, less administrative costs, into the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services.

When justified, due to an applicant giving false information during application for a certificate of title or registration or failing to comply with the provisions of said title/registration, CS/HB 103 gives DHSMV the authority to cancel or refuse to issue a title or registration. Persons committing crimes relating to certificates of title and registration decals are guilty of a third degree felony, punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or, in the case of a habitual felony offender, a term of imprisonment not to exceed 10 years. The bill also provides for punishment of certain offenses, if not otherwise provided for, as a nonmoving violation punishable as provided for in s. 318.18, F.S.

Finally, the bill authorizes the Florida Fish and Wildlife Conservation Commission to register off-road vehicles not otherwise registered pursuant to the Florida Off-Highway Vehicle Titling and Registration Act.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. This bill creates chapter 261, F.S.

Creates s. 261.01, to provide for the short title, the "T. Mark Schmidt Off-Highway-Vehicle Safety and Recreation Act."

Creates s. 261.02, F.S., to provide legislative intent concerning the increased popularity of off-highway vehicles and to express the need for effective management in order to minimize the possible negative impacts of such vehicles on the environment. The bill further provides it is the intent of the Legislature that existing and new off-highway-vehicle recreational areas be managed to sustain long-term use and the environment.

Creates s. 261.03, F.S., to provide the following definitions for use in chapter 261, F.S:

- "Advisory committee" means the Off-Highway-Vehicle Recreation Advisory Committee created by s. 261.04.
- "ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger.
- "Department" means the Department of Agriculture and Consumer Services.
- "Division" means the Division of Forestry of the Department of Agriculture and Consumer Services.

- "OHM" or "off-highway motorcycle" means any motor vehicle used off the roads or highways of this state which has a seat or saddle for the use of the rider and is designed to travel with not more than two wheels in contact with the ground, but excludes a tractor or a moped.
- "Off-highway vehicle" means any ATV or OHM used off the roads or highways of this state for recreational purposes, and which is not registered and licensed for highway use under chapter 320.
- "Program" means the Off-Highway-Vehicle Recreation Program.
- "Public lands" means lands within the State of Florida which are available for public use and which are owned, operated or managed by a federal, state, county or municipal governmental entity.
- "System" means the state-owned off-highway-vehicle recreation areas and trails within the state.
- "Trust fund" means the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services.

The Off-Highway-Vehicle Recreation Advisory Committee

Creates s. 261.04, F.S., the Off-Highway-Vehicle Recreation Advisory Committee within the Division of Forestry. The Commissioner of Agriculture appoints the 9 members of the advisory committee. The commissioner must consider the place of residence of appointees to ensure statewide representation. The advisory committee must consist of: one representative of DACS; one representative of DHSMV; one representative of the Florida Department of Environmental Protection's Office of Greenways and Trails; one representative of the Fish and Wildlife Conservation Commission; one citizen with scientific expertise in disciplines relating to ecology, wildlife biology, or other environmental sciences; one representative of a licensed off-highway-vehicle dealer, and three representatives of off-highway-vehicle recreation groups. The section provides for 2 year terms for advisory committee members, and provides that members shall not be compensated but shall be reimbursed for travel and per diem expenses pursuant to s. 112.061, F.S.

Creates s. 261.05, F.S., to provide the duties and responsibilities of the advisory committee. The advisory committee must:

- Establish policies to guide the DACS regarding the off-highway-vehicle recreational program and the system of off-highway-vehicle recreation areas and trails.
- Make recommendations to the DACS regarding off-highway-vehicle safety, training, and rider-education programs.
- Be fully informed regarding all governmental activities affecting the program.
- Be informed regarding off-highway-vehicle impacts and effects on the environment, wildlife habitats, and native flora and fauna, and must make recommendations to avoid or minimize adverse environmental impacts and promote sustained long-term use.
- Be fully informed regarding the inventory of off-highway-vehicle access and opportunities.
- Meet at various times and locations throughout the state to receive comments on the implementation of the program.
- Review and make recommendations annually regarding the DACS's proposed budget of expenditures from the designated off-highway vehicle funds in the trust fund, which may include providing funds to match grant funds available from other sources.
- Make recommendations regarding all capital outlay expenditures from the trust fund proposed for inclusion in the budget.
- Review grant applications submitted by any governmental agency or entity, or non-governmental entity, requesting moneys from the trust fund to create, operate, manage, or improve off-highway-vehicle recreation areas or trails within the state; protect and restore affected natural areas in the system, or provide off-highway-vehicle driver education. The

advisory committee shall recommend to the DACS approval or denial of such grant applications based upon criteria established by the advisory committee.

Creates s. 261.06, F.S., to provide the following functions, duties, and responsibilities of the DACS:

- Coordination of the planning, development, conservation, and rehabilitation of state lands in and for the system.
- Coordination of the management, maintenance, administration, and operation of lands in the system, and the provision of law enforcement and appropriate public safety activities.
- Management of the off-highway vehicle funds in the trust fund and approval of the advisory committee's budget recommendations.
- The implementation of the program, including the ultimate approval of grant applications submitted by governmental agencies, or entities or non-governmental entities.
- Coordination to help ensure compliance with environmental laws and regulations of the program and lands in the system.
- The implementation of the policies established by the advisory committee.
- Provision of staff assistance to the advisory committee.
- Preparation of plans for lands in, or proposed to be included in, the system.
- Conducting surveys and the preparation of studies as are necessary or desirable for implementing the program.
- Recruitment and utilization of volunteers to further the program.
- Rulemaking authority to implement the provisions of ss. 261.01 through 261.10.

Creates s. 261.07, F.S., to provide that, in consultation with the advisory committee, DACS must publish a guidebook which includes applicable laws and regulations, trail and facility maps, and information regarding the responsibilities of users of the facilities and trails. The section provides the guidebook may include other public areas and trails, and facilities for the use of off-highway-vehicles. The guidebook must be sold at a price, which covers the cost of preparing, printing and distributing the guidebook, and must be available for distribution no later than October 1, 2002.

Creates s. 261.08, F.S., to provide for the repair, maintenance, and restoration of off-highway-vehicle areas, trails, and lands. The section provides the highest priority for management of the system is the safety of the public; the appropriate use of lands, and the conservation of the environment, wildlife habitats, and native flora and fauna in the system. The section provides the public land management agency must monitor the system to determine compliance with applicable environmental laws and regulations, and take appropriate action as necessary.

Creates s. 261.09, F.S., to provide that the public land management agency may contract with private persons or entities and enter into cooperative agreements with other public agencies for the maintenance of the system, including public law enforcement agencies.

Creates s. 261.10, F.S., to provide that state off-highway-vehicle recreation areas and trails must be designated and maintained for recreational travel by off-highway vehicles, not generally suitable or maintained for normal travel by conventional two-wheel-drive vehicles, and foot traffic.

Creates s. 261.11, F.S., to provide that no off-highway-vehicle may be operated on public roads, streets or highways except as otherwise permitted by the managing state or federal agency. A violation of this section is a non-criminal traffic infraction punishable as provided in chapter 318 (\$30 fine).

Creates s. 261.12, F.S., to designate the monies that are to be designated as Off-Highway-Vehicle funds and provide that those funds shall be allocated and appropriated exclusively for implementing the act and providing or matching grant funds to do the same. Provides that any balance from those designated funds shall remain therein.

Section 2. Amends s. 316.2074, F.S., to redefine the term “all-terrain vehicle.” The definition increases the weight of an all-terrain vehicle from 600 to 900 pounds, and removes references to metric measures.

The Florida Off-Highway-Vehicle Titling and Registration Act

Section 3. An un-numbered section that designates section 3 through 20 of this bill as the “Florida Off-Highway-Vehicle Titling and Registration Act.”

Section 4. An un-numbered section that provides for Legislative intent that all off-highway vehicles in the state, purchased after the effective date of this bill, or which are used on public lands must be titled, and all off-highway vehicles in the state, which are used on public lands must be registered. Out-of-state off-highway-vehicles are not required to be registered and titled and governmental owned off-highway-vehicles only pay a registration and titling fee to cover administrative costs.

Section 5. An un-numbered section that provides definitions for use in sections 3 through 20. The section provides the term:

- “ATV” means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator and with no passenger.
- “Dealer” means any person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute off-highway vehicles. Such person must have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.
- “Department” means the Department of Highway Safety and Motor Vehicles.
- “Florida resident” means a person who has had a principal place of domicile in this state for a period of more than 6 consecutive months, who has registered to vote in this state, who has made a statement of domicile pursuant to section 222.17, Florida Statutes, or who has filed for homestead tax exemption on property in this state.
- “OHM” or “off-highway motorcycle” means any motor vehicle used off the roads or highways of this state which has a seat or saddle for the use of the rider and is designed to travel with not more than two wheels in contact with the ground, but excludes a tractor or a moped.
- “Off-highway vehicle” means any ATV or OHM used off the roads or highways of this state for recreational purposes, which is not registered and licensed for highway use pursuant to chapter 320.
- “Owner” means a person, other than a lien holder, having the property in or title to an off-highway vehicle, including a person entitled to the use or possession of an off-highway vehicle subject to an interest held by another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- “Public lands” means lands within the State of Florida which are available for public use and which are owned, operated or managed by a federal, state, county or municipal governmental entity.

Section 6. An un-numbered section that provides that the administration of the titling and registering of off-highway-vehicles is the responsibility of the DHSMV.

Section 7. An un-numbered section that authorizes DHSMV to adopt rules to administer the provisions of this act.

Off-Highway-Vehicle Titling

Section 8. An un-numbered section that provides all off-highway-vehicles purchased by a resident of Florida after the effective date of this act or which are operated on public lands must be titled, and any such vehicle must have the title transferred within 30 days after the sale of the vehicle. The section provides for a \$10 fee for title transfer applications after the 30-day period. Five dollars of that fee is retained by the county tax collector.

The section further provides: the certificate of title is prima facie evidence of the ownership of the off-highway-vehicle; for the cancellation of a title if the vehicle is destroyed or abandoned; and a design for the title certificate. The section provides a service charge of \$4.25 for the issuance, duplication, or transfer of any title, and a service charge of \$1.25 for each application which is handled in connection with the recordation or notation of a lien on an off-highway vehicle which is not in connection with the purchase of such vehicle. The service charge is retained by DHSMV for each handled directly by DHSMV. Otherwise, the service charge is retained by the tax collector who handles the application. The section further authorizes tax collectors to impose an additional service charge of 50 cents when a transaction occurs in a tax collector branch office.

Section 9. An un-numbered section that provides where the owner of an off-highway vehicle that is required to be titled must apply to the county tax collector for a certificate of title. The application must include the true name of the owner, the residence or business address of the owner, and a complete description of the vehicle. The application must be signed by the owner and must be accompanied by a fee of \$29.

The section provides that proof of ownership must be established by the owner when applying for a title. Such proof may be demonstrated with a bill of sale, a manufacturer's statement of origin, an affidavit of ownership for off-highway vehicles purchased before the effective date of this act, or any other document acceptable to DHSMV.

To apply for a title upon transfer of ownership of an off-highway vehicle, the new owner must surrender to DHSMV the last title document issued for that vehicle. The document must be properly executed. The section defines proper execution to include the previous owner's signature and certification that the off-highway vehicle to be transferred is debt-free or is subject to a lien. If a lien exists, the previous owner must furnish the new owner, on forms supplied by the DHSMV, the names and addresses of all lien holders and the dates of all liens, with a statement from each lien holder that the lien holder has knowledge of and consents to the transfer of title to the new owner.

The section provides that an application for an initial title or a title transfer must include payment of the applicable state sales tax or proof of payment of such tax, except for off-highway vehicles purchased or transferred before the effective date of this act.

Section 10. An un-numbered section that provides that DHSMV may issue a duplicate certificate of title upon application if DHSMV is satisfied the original certificate has been lost, destroyed, or mutilated. A fee of \$15 shall be charged for issuing a duplicate certificate. An addition fee of \$7 must be charged for expedited service in issuing a duplicate certificate of title. The DHSMV shall issue each certificate of title applied for under this subsection within 5 working days after receipt of a proper application or refund the additional \$7 fee upon written request by the applicant.

If, following the issuance of an original, duplicate, or corrected certificate of title by DHSMV, the certificate is lost in transit and is not delivered to the addressee, the owner of the off-highway vehicle or

the holder of a lien may, within 180 days after the date of issuance of the title, apply to DHSMV for reissuance of the certificate of title free of charge.

The section provides DHSMV must implement a system to verify that the application is signed by a person authorized to receive a duplicate title certificate if the address shown on the application is different from the address shown for the applicant on the records of DHSMV.

Section 11. An un-numbered section that provides when any person is selling a new off-highway vehicle in this state, that person must furnish a manufacturer's statement of origin to the purchaser. The statement must: be signed and dated by an authorized representative of the manufacturer; indicate the complete name and address of the purchaser; include a complete description of the vehicle; and contain as many assignments as necessary to show title in the name of the purchaser.

The section further provides it is unlawful for an off-highway-vehicle manufacturer, manufacturer's representative, or dealer to issue a manufacturer's certificate of origin describing an off-highway vehicle with the knowledge that the description is false or that the off-highway vehicle described does not exist. It is unlawful for any person to obtain or attempt to obtain a certificate of origin with the knowledge that the description is false or that the off-highway vehicle does not exist. The section provides any person who violates this subsection is guilty of a felony of the third degree.

Off-Highway-Vehicle Registration

Section 12. An un-numbered section that provides that all off-highway vehicles operated on public lands in Florida, with the exception of off-highway vehicles owned by non-Florida residents, used for agricultural purposes or rented for use from a franchisee of a public entity that controls a public beach, must be registered within 30 days after purchase. The section further provides nothing in this bill prohibits the owner, operator, or manager of public lands containing improved and maintained off-highway-vehicle recreation areas or trails from charging an entrance fee for use of such lands to offset the costs of operation and maintenance of such off-highway-vehicle facilities.

Section 13. An un-numbered section that provides that the owner of each off-highway vehicle, which requires registration in this state, must file a registration application with the county tax collector. The application must provide the owner's name and address, residency status, a Florida identification card number such as a driver's license number, and a complete description of the vehicle to be registered, and must be accompanied by a fee of \$25. Proof of ownership must be established by presenting a title for the off-highway vehicle.

The section provides that DHSMV must issue a certificate of registration and a registration number upon submittal of a complete application. DHSMV must furnish with each certificate issued, a decal signifying the years during which the certificate is valid and containing the assigned registration number. Such decal must be affixed to the rear of the off-highway vehicle.

Section 14. An un-numbered section that provides that an off-highway-vehicle certificate of registration is valid through the owner's next birthday. If the owner's birthday falls within the first 3 months after issuance of the certificate of registration, the certificate is valid through the owner's following birthday. However, a certificate of registration may not be valid for more than 15 months. The section provides DHSMV must provide for annual re-registration of off-highway vehicles either in person at the county tax collector's office or by mail.

Section 15. An un-numbered section that provides that the owner of the off-highway vehicle must furnish to DHSMV notice of the transfer of any whole or partial interest in an off-highway vehicle registered or titled in this state or of the destruction or abandonment of such vehicle within 30 days. The

certificate expires upon transfer, destruction, or abandonment, unless the transfer of a partial interest does not affect the owner's right to operate the vehicle.

The section further provides that any holder of a certificate of registration must notify DHSMV or the county tax collector within 30 days after a change of address and must furnish DHSMV or the county tax collector with the new address. DHSMV may provide by rule for the surrender of the certificate bearing the former address and for its replacement with a new certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

Section 16. An un-numbered section that provides that a duplicate off-highway-vehicle registration certificate or decal to replace a lost or misplaced certificate or decal may be obtained from the county tax collector for a \$10 fee. A duplicate certificate or decal may not be issued except by written request of the registered owner or a person authorized by the owner.

The section includes in the registration fee for off-highway vehicles a \$2.75 service fee to be retained by the county tax collector for each registration certificate or decal issued, replaced, or renewed. The remainder of the fees collected by the county tax collector must be remitted to DHSMV.

The section further provides that a mail service charge may be collected for each registration or re-registration mailed by DHSMV or any tax collector. All registrations and re-registrations must be mailed by first class mail. The amount of mail service charge must be the actual postage required rounded to the nearest 5 cents, plus a 25-cent handling charge. The mail service charge is in addition to the registration fee in section 14.

Section 17. An un-numbered section that directs DHSMV to deposit all funds received from this bill, less administrative costs of \$2 per title transaction, and \$2 per registration transaction, into the Incidental Trust Fund of the division of Forestry, Department of Agriculture and Consumer Services.

Section 18. An un-numbered section that provides if DHSMV finds an applicant for an off-highway-vehicle certificate of title or registration gave a false statement or false or incomplete information in applying for the certificate or otherwise failed to comply with the applicable provisions pertaining to the application for a certificate, it may refuse to issue or cancel the certificate.

The section further provides that DHSMV may cancel any pending application or any certificate if it finds any title or registration fee or sales tax pertaining to such registration has not been paid, unless the fee or tax is paid within a reasonable time after DHSMV has given notice.

Violations and Penalties

Section 19. An un-numbered section that provides it is unlawful for any person to procure or attempt to procure a certificate of title or duplicate certificate of title to an off-highway vehicle, or to pass or attempt to pass a certificate of title or duplicate certificate of title to an off-highway vehicle, if such person knows or has reason to believe that the vehicle has been stolen. Any person who violates this provision is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years, a fine not exceeding \$5,000, or, if applicable, as a habitual felony offender.

The section provides that it is unlawful for any person, knowingly and with intent to defraud, to have in his or her possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, duplicate certificate of title, registration, bill of sale, or other indicia of ownership of an off-highway vehicle or to conspire to do any of the foregoing. Any person who violates this provision is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years, a fine not exceeding \$5,000, or, if applicable, as a habitual felony offender.

The section further provides that any person who violates the following unlawful acts related to off-highway vehicle certificates of title is guilty of a felony of the third degree, and such person's off-highway vehicle is subject to seizure:

- To alter or forge any certificate, or retain or use such a certificate knowing it has been altered or forged.
- To use a false name, address, or make any false statement on any application or affidavit required by this act or otherwise commit a fraud on any application.
- To knowingly obtain goods, services, credit, or money by means of an invalid, duplicate, fictitious, forged, counterfeit, stolen, or unlawfully obtained certificate of title registration, bill of sale, or other indicia of ownership.
- To knowingly obtain goods, services, credit, or money by means of a certificate of title which is required by law to be surrendered to DHSMV.

The section further provides that any person who violates the following unlawful acts related to off-highway vehicle registration decals is guilty of a felony of the third degree:

- To make, alter, counterfeit, reproduce, or forge any decal unless authorized by DHSMV or retain such a certificate knowing it has been altered or forged.
- To knowingly possess a forged, counterfeit, or imitation decal, or a reproduction of a decal unless authorized by DHSMV.
- To barter, trade, sell, supply, agree to supply, aid in supplying, or give away a decal unless authorized by DHSMV.

Section 20. An un-numbered section that provides where any person who fails to comply with any provision of sections 3 through 20 for which a penalty is not otherwise provided is guilty of a nonmoving traffic violation, such failure is punishable as provided in s. 318.18, F.S., by a \$30 fine.

Section 21. Amends s. 375.315, F.S., to clarify the Fish and Wildlife Conservation Commission may continue to collect a \$10 fee, and issue a registration certificate and decal for off-road vehicles operated upon public lands under their jurisdiction.

Section 22. Appropriates \$156,660 and one position to the Department of Agriculture and Consumer Services from the designated off-highway vehicle funds in the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services, for fiscal year 2001-2002 to carry out the provisions of this act.

Section 23. Provides that the act shall take effect October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

	Amount Year 1 (FY 01-02)	Amount Year 2 (FY 02-03)	Amount Year 3 (FY 03-04)
1. <u>Revenues:</u>			
Department of Agriculture & Consumer Services:			
Anticipated Recurring Revenues	\$784,000	\$862,400	\$948,640

Grand Total All Revenues	<u>\$784,000</u>	<u>\$862,400</u>	<u>\$948,640</u>
2. <u>Expenditures:</u>			
Department of Agriculture & Consumer Services:			
Non-Recurring Costs:			
*OCO Professional Pkg.			
1 FTE @ \$1,500	\$ 1,500	\$ -	\$ -
OCO GPS Units/Computers/			
Miscellaneous	2,000	3,000	3,000
Acquisition of Motor Vehicles			
4x4 Utility Vehicle	<u>26,000</u>	-	-
Total Non-Recurring Costs	29,500	3,000	3,000
Recurring Costs:			
Positions (located in Tallahassee)			
**1 FTE – Environmental			
Specialist II	35,245	48,403	49,855
Other- OPS (Staff support)	12,000	12,000	12,000
Expenses – Professional Expense			
Package @ \$9,915	9,915	9,915	9,915
Travel (Per diem, gas)	5,000	5,000	5,000
Advisory Committee meetings	8,000	8,000	8,000
Supplies	5,000	10,000	15,000
Printers	-	50,000	50,000
Contractual Services	50,000	200,000	300,000
Parts/Maintenance	1,000	10,000	20,000
Utilities	<u>1,000</u>	<u>2,000</u>	<u>3,000</u>
Total Recurring Costs	<u>127,160</u>	<u>355,318</u>	<u>472,770</u>
Grand Total All Costs	<u>\$156,660</u>	<u>\$358,318</u>	<u>\$475,770</u>

*Other Costs of Operation

**Position entered at 10% above minimum with a 25% lapse for first year start-up. Second and third year salaries are annualized and given a projected 3% pay raise.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

	FUND	AMOUNT Year 1 (FY 01-02)	AMOUNT Year 2 (FY 02-03)	AMOUNT Year 3 (FY 03-04)
1. <u>Revenues:</u>				
Department of Highway Safety & Motor Vehicles:				
Registration service fee (\$2.50 x 4,490)		\$ 11,225	\$ 11,225	\$ 11,225
Title service fee (\$4.25 x 4,490)		<u>19,083</u>	<u>-</u>	<u>-</u>
Total Revenue		30,308	11,225	11,225

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of off-highway vehicles would pay \$29 to have their off-highway vehicle titled and \$25 for the annual inspection.

D. FISCAL COMMENTS:

The Florida Off-Highway Vehicle Titling and Registration Act, through the Department of Highway Safety and Motor Vehicles, would require each new off-highway vehicle to be titled in order to help track stolen vehicles. The revenue generated by the titling and registration process will be placed in the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services. The monies will be used to manage the Off-Highway Vehicle Recreation Program that will be administered by the Division of Forestry. This includes personnel, administrative and operating expenses, expenses related to safety, training, and rider-education, and acquisition of land for trails to be included in the Off-Highway Vehicle Recreation Program.

Revenues were calculated based on a study by the Off-Road Vehicle industry shown below:

Certificate of Title

\$29 fee, less \$2 retained by the Department of Highway Safety.

Study estimates that 12,000 ATV/Off-highway motorcycles will be titled per year.

12,000 x \$27	\$324,000
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Certificate of Registration

\$25 fee, less \$2 retained by the Department of Highway Safety.

Study estimated 20,000 off-highway vehicles registered to operate on public lands the first year, and increased 10% the second and third years.

20,000 x \$23	<u>460,000</u>
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Total Revenue, first year	<u>\$784,000</u>
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IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

CS/HB 103 provides rulemaking authority to the Department of Agriculture and Consumer Services for implementation of the provisions of the section, and to the Department of Highway Safety and Motor Vehicles to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., pertaining to the implementation of off-highway vehicle titling and registration.

C. OTHER COMMENTS:

These comments speak to the bill as originally filed.

Department of Highway Safety & Motor Vehicles:

This bill should be rewritten within Chapters 319 and 310, Florida Statutes. As a whole, ATV's are not road worthy. They fail to meet all of the safety requirements of Chapter 316 (windshield, seatbelts, braking requirement, etc.). Also, the limited size of an ATV reduces the visibility by other vehicle drivers. This could increase the possibility of an accident occurring.

The speed of an ATV is limited/slow, which could increase the probability of an accident occurring. Another factor to consider is that the Division of Motor Vehicles may have to assign serial numbers to the ATV's if they do not have one already. This would put an additional workload on the compliance examiners if they have to inspect the vehicle before a tag is issued. This could cause a workload impact for ATV's with non-conforming vehicle identification numbers.

Finally, insurance requirements may be an issue to resolve. Therefore, the Department of Highway Safety & Motor Vehicles recommends that they are registered for the purpose of establishing legal ownership; but not be allowed to operate on public roads and highways.

Committee on Fiscal Policy & Resources:

With the adoption of the substitute strike-everything amendment, the bill no longer references the Off-Highway-Vehicle Revolving Trust Fund, created by the tied bill, HB 101. Instead, the bill references the Incidental Trust Fund of the Division of Forestry. If enacted as amended, HB 101 would no longer need to be tied to HB 103.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Council for Competitive Commerce

At its April 23, 2001 meeting, The Council for Competitive Commerce adopted six amendments to the substitute amendment to HB 103. The bill and its amendments were adopted as a committee substitute which was reported favorably. These amendments to the substitute amendment:

- Change the name for the act may be cited to the "T. Mark Schmidt Off-Highway-Vehicle Safety and Recreation Act;"
- Provide that the advisory committee members are paid the state rate for travel and per diem expenses pursuant to s. 112.061, F.S.;

- Provide that off-highway-vehicles may travel on those public roads manage by a state or federal agency that already permits such vehicles to operate on those roads;
- Provide that those off-highway-vehicles used for agricultural purposes and rent from concessionaires who are franchised by the public entity controlling the beaches are exempt from the registration requirement;
- Provide that failure to comply with the requirements of the Act which is not otherwise punishable under the Act are punishable as provide in s. 318.18, F.S.; and
- Make technical corrections.

Committee on Fiscal Policy & Resources

On April 17, 2001 the House Committee on Fiscal Policy & Resources adopted a substitute strike-everything amendment, which replaces the previous strike-everything amendment by Agriculture and Consumer Affairs, and will travel with the bill. The substance of this amendment, with the amendments adopted by the Council on Competitive Commerce, now constitutes the body of the bill. Please see Section II.D., Section –By-Section analysis, for details.

Committee on Agriculture and Consumer Affairs

On February 21, 2001, the House Committee on Agriculture and Consumer Affairs approved a strike-everything amendment, offered by Representative Russell. Some of the changes were of a technical nature, such as changing dates that were incorrect due to last year’s legislation being used as the basis for this year’s bill.

Most of the changes in the amendment addressed issues concerning protection of the environment and maintaining the natural resources. For example, the make-up of the advisory board was changed to include a citizen with scientific expertise in disciplines relating to ecology, wildlife biology, or other environmental sciences. It also allows for grants to be awarded for restoration of natural areas and to provide rider education. The amendment clarifies that lands must be rehabilitated in accordance with best management plans when damaged by off-highway vehicle use.

In addition, the amendment provides a definition for “public lands”. At the request of the Department of Highway Safety and Motor Vehicles, language was included prohibiting all-terrain vehicles from operating on public roads, streets, or highways in the state. The amendment also removes the fee for the guidebook to be published by the Department of Agriculture and Consumer Services. And lastly, the amendment clarifies that owners, operators, or managers of off-highway vehicle recreation areas are not prohibited from charging entrance or admission fees.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Debbi Kaiser

Susan Reese

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DATE: April 24, 2001

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AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Douglas Pile

Greg Turbeville

AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

Staff Director:

David M. Greenbaum

Hubert "Bo" Bohannon