

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

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BILL: CS/CS/SB 798

INTRODUCER: Transportation Committee, Agriculture Committee and Senator Baker

SUBJECT: Off-Highway Vehicles

DATE: April 21, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Leal</u>	<u>Poole</u>	<u>AG</u>	<b>Fav/CS</b>
2.	<u>Eichin</u>	<u>Noble</u>	<u>TA</u>	<b>Fav/CS</b>
3.	<u>Carey</u>	<u>Kelly</u>	<u>WPSC</u>	<b>Favorable</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

A number of commercially available vehicles designed for off-highway use exceed current statutory size and weight limits, or otherwise do not fall within current statutory definitions of all-terrain vehicles (ATV) or off-highway vehicles (OHV). Vehicles not meeting the statutory definitions may not be operated on public lands and, therefore, are not required to comply with the safety and titling requirements for OHV's.

The bill:

- amends the basic definition of "ATV" to encompass larger, heavier vehicles;
- creates a new statutory definition of "ROV" for recreational off-highway vehicles; and
- expands the definition of "off-highway vehicle" to include ROVs.

The new definitions increase the number of vehicle types which may be titled under ch. 317, F.S., and consequently, the number of vehicle types authorized for operation on public lands. When operated on public lands, ROV's would have to comply with the safety requirements found in chapters. 261 and 316, Florida Statutes. Expanding the types of vehicles titled under ch. 317, F.S., will have a positive, but indeterminate fiscal impact on state revenues.

This bill substantially amends the following sections of the Florida Statutes: s. 261.03, s. 316.2074, and s. 317.0003.

## II. Present Situation:

### *ATV and OHV Defined*

Chapters 261, 316, and 317, F. S., define “ATV” as 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. “Two-rider ATV” is defined as any ATV that is specially designed for a single operator and one passenger. ATV and two-rider ATV are both considered OHV’s under the current statutory definition of OHV found in chs. 261 and 317, F.S.

Chapters 261 and 317, F.S., define “Off-highway vehicle” as any ATV, two-rider ATV, or off-highway motorcycle (OHM) operated off the roads or highways of this state and not registered and licensed for highway use under ch. 320, F.S.

Section 261.11, F.S., prohibits off-highway vehicles from being operated upon the public roads, streets, or highways of this state, except as otherwise permitted by the managing local, state, or federal agency. A violation is a noncriminal traffic infraction.

A number of commercially available vehicles designed for off-highway use exceed current statutory size and weight limits, or otherwise do not fall within the current statutory definitions of ATV or OHV. Vehicles not meeting the statutory definitions may not be operated on public lands designated as OHV riding areas and, therefore, are not required to comply with the safety and titling requirements for OHV’s.

### *Off-Highway Vehicle Safety and Recreation Act*

In 2002, the legislature passed into law the “T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act.” This act created ch. 261, F.S. Due to the increased popularity of OHV’s, ch. 261, F. S., was enacted to facilitate the maintenance of existing OHV trails and recreation areas and to create new OHV trails and recreation areas in a manner sustaining both long-term use and the environment. The act created the OHV Recreation Program which provides the State of Florida with a set of guidelines to follow for developing and maintaining state lands for OHV users.

Chapter 261, F.S., creates an OHV Recreation Advisory Committee within the Department of Agriculture and Consumer Services’ (DACS) Division of Forestry. The Committee is directed:

- To establish policies to guide DACS regarding the OHV Recreation Program and the system of OHV recreation areas and trails;
- Review and make recommendations annually regarding DACS proposed budget of Expenditures from the trust fund;
- Make recommendations regarding all capital outlay expenditures from the trust fund;
- Review grant applications requesting moneys from the trust fund to create, operate, manage or improve OHV recreation areas within the state.

*OHV Recreation Program*

Under ch. 261, F.S., DACS is responsible for the administration of the OHV Recreation Program; this includes approval for grant applications. The grant program provides financial assistance to public agencies statewide in order to improve riding opportunities on state lands. Funding for the competitive grant program comes from fees derived from the titling of OHV's.

*OHV Titling:*

Chapter 317, F.S., provides for OHV titling by the Department of Highways Safety and Motor Vehicles (DHSMV). DHSMV may adopt rules and prescribe the forms necessary for the titling and registering of OHV's by residents of the state. Any OHV purchased by a resident of this state and operated on public lands must be titled. Chapter 317, F.S., exempts from the titling and registration requirements non-Florida residents, governmental entities, vehicles used for agriculture, and OHV's rented from a franchisee of a public entity that controls a public beach.

*ATV and OHV Safety Requirements:*

Chapters 261 and 316, F.S., provide guidelines for the safe operation of ATV's and OHV's in the state. Section 316.2074, F.S., requires anyone under the age of sixteen years of age who is operating or riding on an ATV to wear a safety helmet. In addition, s. 316.2074, F.S., prohibits the operation of ATV's on any public roads of the state, except as otherwise permitted by the managing state or federal agency. A violation of s. 316.2074 is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S. Section 316.2123, F.S., authorizes the daytime use of ATVs on unpaved roadways with posted speed limits of less than 35 mph. However, the governing body of a county may, by majority vote, opt out of the provision or, alternatively, designate and mark certain unpaved roads for permissible ATV use.

Section 261.20, F.S, provides the following restrictions applicable when operating an OHV on public lands:

- Anyone under 16 years of age must:
  - be supervised by an adult.
  - complete an approved OHV safety course.
  - wear eye protection, boots, and a helmet.
- All OHV's must be equipped with
  - a spark arrester,
  - a braking system,
  - a muffler, silencer or other device which limits sound,
  - a headlight and tail lamp (if operated after dark),
- It is unlawful to:
  - carry more persons than the vehicle was specifically designed to carry,
  - operate an OHV while under the influence of controlled substances or alcohol, or
  - operate an OHV in a careless or reckless manner.

Any person who violates this section is subject to a fine not less than \$100.00 and may have his or her privilege to operate an ATV on public lands revoked.

### III. Effect of Proposed Changes:

The bill amends the basic definition of “ATV” and “off-highway vehicle” and creates the statutory definition of “ROV.” In order for a vehicle to be classified as an ROV it must:

- Be 60 inches or less in width and weigh 1,500 pounds or less;
- Be designed to travel on four or more nonhighway tires;
- Have nonstraddle seating and a steering wheel;
- Be manufactured for recreational use by one or more persons.

The statutory definition of “ROV” excludes golf carts and low-speed vehicles.

The bill amends the statutory definition of “ATV” by increasing the dry weight from “900 pounds or less” to “1,200 pounds or less” and by requiring the vehicle be designed to travel on three or more “nonhighway” tires, rather than three or more “low pressure tires.” The statutory definition of “off-highway vehicle” is amended to include ROV’s.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

The titling of ROV’s may lead to an increase in the amount of titling fees received by DHSMV. The \$29.00 fee, less an administrative cost of \$2.00 is deposited by DHSMV into the Incidental Trust Fund of the Division of Forestry of DACS for the purpose of implementing the OHV Recreation Program and other OHV-related purposes. In addition to the title fee, DHSMV may issue a validation sticker whose fees are established in ss. 320.03(5), 320.031 and 320.04, F.S.

#### B. Private Sector Impact:

In order to operate on “public lands” vehicles meeting the new definition of ROV will be required to pay a \$29.00 title application fee. In addition, ROV’s will have to be equipped with a spark arrester, a braking system, a muffler, and silencer or other device which limits sound emissions.

The bill will allow for ROV's to be regulated under chs. 261, 316 and 317, F.S. Consequently, these vehicles, upon being titled, would be eligible to be operated on public lands designated as OHV riding areas and would have to comply with certain safety requirements.

C. Government Sector Impact:

According to DHSMV, the number of vehicles that will pay the \$29.00 title application fee and possible validation sticker fee is undeterminable.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**The Committee Substitute (CS) by the Agriculture Committee on March 27, 2009,** deletes all language after the enacting clause and new language is inserted. The CS makes the following changes:

- Maintains the current width and design requirements of the current statutory definition of “ATV;”
- Modifies the tire requirements in the current statutory definition of “ATV;”
- Creates the statutory definition of “ROV,” which is defined as an off-highway vehicle with four or more tires, having a nonstraddle seating and a steering wheel;
- Maintains the statutory definition of “two-rider ATV” and maintains “two-rider ATV” as part of the definition of “off-highway vehicle.”
- Modifies the definition of “off-highway vehicle” to include “ROV.”

**The CS by the Transportation Committee on April 1, 2009,** reduces the maximum allowable weight identified in the previous version of the bill’s definition of ATV from 1,500 pounds to 1,200 pounds.

B. **Amendments:**

None.