

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 1024

INTRODUCER: Transportation Committee and Senator Dean

SUBJECT: Off-highway Vehicles

DATE: March 28, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1024 revises the definitions of ATV (all-terrain vehicle) and ROV (recreational off-highway vehicle) in s. 261.03, 316.2074, and 317.0003, F.S., to:

- Remove any reference to the seating type, the steering control mechanism, and the number of passengers; and
- Increase the authorized width of an ROV from 64 to 65 inches.

The bill amends s. 261.20, F.S., to prohibit more passengers than an OHV (off-highway vehicle) is designed by the manufacturer to carry. Current law prohibits passengers on an OHV, or more than one passenger if the OHV is designed to carry both an operator and passenger.

II. Present Situation:

The U.S. Forest Service estimates there are as many as 9.8 million ATVs and off-road motorcycles in the U.S. as of January 1, 2008.¹ Due to the rise in popularity of OHVs for recreational use, ATVs and ROVs are constantly updated and modified to keep up with market changes. These rapid changes have led to hybridization of certain features in OHVs and the differences between ATVs and ROVs have diminished. Features that were exclusive to one type of OHV are now often found in the other.²

¹ U.S. Forest Service, *Off-Highway Vehicle recreation in the United States and its Regions and States*, 8, (February 2008) available at: <http://www.fs.fed.us/recreation/programs/ohv/IrisRec1rpt.pdf> (last visited March 27, 2014).

² Recreational Off-Highway Vehicle Association, *ROVs vs. ATVs*, available at: <http://www.rohva.org/ROVvsATV.aspx> (last visited March 26, 2014).

Use of Off-Highway Vehicles on State Lands

The 2002 Legislature enacted the T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act³ to provide a set of guidelines for the development and maintenance of public lands within the state for OHV use. OHV is defined in s. 261.03(5), F.S., to include any ATV, two-rider ATV,⁴ ROV, or off-highway motorcycle (OHM) that is not registered and licensed for highway use under ch. 320, F.S.

Section 261.03(2), F.S., defines “ATV” to mean any:

- Motorized off-highway or all-terrain vehicle 50 inches or less in width;
- Having a dry weight of 1,200 pounds or less;
- Designed to travel on three or more non-highway 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.

Section 261.03(8), F.S., defines “ROV” to mean any:

- Motorized recreational off-highway vehicle 64 inches or less in width;
- Having a dry weight of 2,000 pounds or less;
- Designed to travel on four or more non-highway tires;
- Having non-straddle seating and a steering wheel; and
- Manufactured for recreational use by one or more persons.⁵

ATVs, ROVs, (and OHMs) are the only unlicensed motor vehicles allowed in designated OHV areas. No OHV may be operated on public roads in the state, except as permitted by the managing local, state, or federal agency.⁶

OHVs on state lands may be restricted given the location. There are two OHV designated areas in state forests: the Croom Motorcycle Area at Withlacoochee State Forest permits operation of ATVs and OHMs, but ROVs are not currently authorized;⁷ ATVs, ROVs, and OHMs are authorized on the Off-Highway Vehicle Trail System at Tate’s Hell State Forest.⁸

Section 261.20, F.S., sets forth operating requirements for OHVs on public lands. A person who violates these requirements commits a noncriminal infraction subject to a fine of at least \$100

³ Chapter 261, F.S., ch. 2002-295, L.O.F.

⁴ Defined in s. 261.03(11), F.S., to mean any ATV that is specifically designed by the manufacturer for a single operator and one passenger.

⁵ Golf carts as defined in ss. 320.01 and 316.003, F.S., or low-speed vehicles as defined in s. 320.01, F.S., are not included in the definition of ROV.

⁶ Section 261.11, F.S. See also s. 316.2123, F.S.

⁷ Department of Agriculture and Consumer Services, *Croom Motorcycle Area at Withlacoochee State Forest*, available at: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Withlacoochee-State-Forest/Croom-Motorcycle-Area-at-Withlacoochee-State-Forest> (last visited March 26, 2014).

⁸ Department of Agriculture and Consumer Services, *Off-Highway Vehicle Trail System at Tate’s Hell State Forest*, available at: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Off-Highway-Vehicle-Trail-System-at-Tate-s-Hell-State-Forest> (last visited March 26, 2014).

and may have the privilege of operating an ATV on public lands revoked. If the person acts with intent to defraud or commits a second or subsequent violation, the fine increases to at least \$500.⁹

Off-Highway Vehicle Titling

Chapter 317, F.S., requires all OHVs operated on public lands in this state to be titled and issued a certificate of title for easy determination of ownership. The Florida Department of Highway Safety and Motor Vehicles (DHSMV) reported that 12,554 OHVs titles were issued state-wide in Fiscal Year 2012-2013.¹⁰

An owner of an OHV that is required to be titled must apply to the county tax collector for OHV title transactions.¹¹ An OHV title fee is \$29. DHSMV is required to deposit \$27 into the Incidental Trust Fund of the Florida Forest Service of the Department of Agriculture and Consumer Services, and \$2 into the Highway Safety Operating Trust Fund. A tax collector may charge an additional branch fee of \$.50 for each title or decal that it issues.¹²

Use of Off-Highway Vehicles on Federal Lands

In 2005, the U.S. Forest Service announced a new regulation governing off-highway vehicles to address the growing popularity and capabilities of these vehicles and their use on National Forest System lands.¹³ “Off-highway vehicle” is defined in the rule to mean “any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.”¹⁴ Operation of any off-highway vehicle on National Forest System lands other than in accordance with the regulations is prohibited.¹⁵ It is the identified vehicle class for designated roads and trails on given federal lands that determines which off-highway vehicles are authorized.

III. Effect of Proposed Changes:

Sections 1, 3, and 4 of the bill amend the definitions of ATV and ROV in ss. 261.03, 316.2074, and 317.0003, F.S., to:

- Remove any reference to the seating type, the steering control mechanism, and the number of passengers; and
- Increase the authorized width of an ROV from 64 to 65 inches.

Due to these revisions, the definitions of ATV and ROV are distinguished by width, weight, and the number of non-highway wheels. Under both definitions the vehicle must be manufactured for recreational use by one or more persons. The type of seating and the steering mechanism no longer distinguish the two vehicles.

⁹ Section 261.20(6), F.S.

¹⁰ DHSMV, *Agency Bill Analysis: SB 1024* (March 17, 2014).

¹¹ Section 317.0006(4)(c), F.S.

¹² Section 317.0007(1), F.S.

¹³ 36 C.F.R. 212, Subpart B, Designation of Roads, Trails, and Areas for Motor Vehicle Use. See also 70 Fed. Reg. 68264.

¹⁴ 36 C.F.R. 212.1

¹⁵ 36 C.F.R. 261.13.

The revisions potentially authorize an OHV currently defined as an ROV to meet the definition of an ATV if the vehicle is 50 inches or less in width, 1,200 pounds or less in dry weight, and designed to travel on three *or more* non-highway tires. A vehicle currently classified as an ROV that meets the definition of ATV under the bill would be permitted to access lands not previously admissible, such as the Croom Motorcycle Area.

Section 2 amends s. 261.20, F.S., to prohibit more passengers than an OHV is designed by the manufacturer to carry. Current law prohibits passengers on an OHV, or more than one passenger if the OHV is designed to carry both an operator and passenger.

The bill also revises the penalty provision in s. 261.20(6), F.S., to clarify that a violator may have the privilege of operating any OHV on public land revoked, not just ATV use. The provisions of s. 261.20, F.S., apply to all OHVs.

Section 5 provides an effective date of July 1, 2014.

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:

Expansion of the definitions of ATV and ROV could increase the number of vehicles eligible to be titled. The DHSMV is unable to quantify the possible increase in the number of ATV and ROV titles issued, but the amount is believed to be insignificant.¹⁶

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

See Tax/Fee Issues. The fiscal impact to the government is positive indeterminate but expected to be insignificant. Various state trust funds and local governments receive funds

¹⁶ DHSMV, *Agency Bill Analysis: SB 1024* (March 17, 2014).

from OHV titling fees and from fines for violations of OHV public land operational requirements. However, it is unknown how many additional OHVs will be titled pursuant to the revised definitions, or how many additional violations may occur pursuant to the revised violation.

It is unknown whether existing trails will accommodate an increase in the authorized width of ROVs, in locations where ROV operation is allowed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 261.03, 261.20, 316.2074, and 317.0003.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 13, 2014:

The CS expands the prohibition in s. 261.20(5), F.S., to prohibit carrying more passengers than the machine is designed by the manufacturer to carry. This change is necessitated by the revisions to the definitions of “ATV” and “ROV.” The CS also revises the penalty provision in s. 261.20(6), F.S., to clarify that the penalty applies to all OHV violations, not just ATV violations.

- B. **Amendments:**

None.