

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 Transportation

BILL: SB 1024

INTRODUCER: Senator Dean

SUBJECT: Off-highway Vehicles

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Pre-meeting
2.			CM	

I. Summary:

SB 1024 revises the definitions of ATV (all-terrain vehicle) and ROV (recreational off-highway vehicle) in three different locations of the Florida Statutes to:

- Remove any reference to the seating type and the steering control mechanism,
- Remove the limitation that an ATV is designed for use by a single operator with no passenger, and
- Increase the authorized width of an ROV from 64 to 65 inches.

These revisions may result in an increased number of ROVs being titled as ATVs and qualifying for operation on certain roads and trails currently restricted to ATV operation. In addition, the increased ROV width may result in more ROVs being titled in Florida.

II. Present Situation:

The use of off-highway vehicles for recreational purposes is a growing trend. “An estimated 5 million off-road recreational vehicles – motorcycles, minibikes, trail bikes, snowmobiles, dune-buggies, all-terrain vehicles, and others – are in use in the United States today, and their popularity continues to increase rapidly.”¹ As noted by the Recreational Off-Highway Vehicle Association:

“Not all off-road vehicles are the same. And all too often, the All-Terrain Vehicle (ATV) is confused with the Recreational Off-Highway Vehicle (ROV). But there are actually some very significant differences between the two, even if both types of off-roaders [may] be four-wheeled and used for similar types of recreation.

¹ Federal Register website, *Executive Order 11644*: <http://www.archives.gov/federal-register/codification/executive-order/11644.html>. Last visited March 8, 2014.

“The most noticeable differences include the fact that ROVs have a steering wheel, acceleration foot pedal and a brake foot pedal, and they are “driven.” ATVs have a handlebar for steering, a throttle controlled by pushing a thumb lever next to the handgrip, and hand lever(s) for front and/or rear brake(s) and a foot pedal for the rear brake. And unlike ROVs, ATVs are “ridden.”

“ROVs currently in the market are specifically designed for an operator age 16 or older with a valid drivers license and one or more passengers. They generally have seats situated side by side or a bench seat, and are equipped with operator and passenger seat belts. They also are equipped with a rollover protective structure (ROPS), side retention features (hard plastic doors or sturdy canvas netting) and handholds. [] Although there are a few exceptions, most ATVs are designed for one rider and have a large seat designed to be straddled by a single operator only, with no passenger. ATVs are rider-active; in order to properly operate an ATV, the rider must be able to shift body weight while riding. Adult-size ATVs are for operators age 16 and older. Youth-model ATVs allow kids as young as age 6 to enjoy ATVs while under active adult supervision.”²

As manufacturers attempt to address market demand, seating type and steering control mechanisms offered on the market may blur the line between ATVs and ROVs.

Use of Off-Highway Vehicles on Federal Lands

In 2005, the United State Department of Agriculture Forest Service announced a new regulation governing off-highway vehicles.³ “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.” Known as the “Travel Management Rule,” its highlights are as follows:

- Each national forest or ranger district must designate those roads, trails, and areas open to motor vehicles.
- The designation must include the class of vehicle and, if appropriate, time of year for motor vehicle use. A given route, for example, could be designated for use by motorcycles, all-terrain vehicles (ATVs), or street-legal vehicles.
- Once designation is complete, the rule prohibits motor vehicle use off the designated system or inconsistent with the designation.
- Designation decisions are to be made locally, with public input and in coordination with state, local, and tribal governments.
- Designations will be shown on a motor vehicle use map.⁴

² Recreational Off-Highway Vehicle Association website: <http://www.rohva.org/ROVsATV.aspx>. Last visited March 10, 2014.

³ 36 C.F.R. 212, Subpart B, *Designation of Roads, Trails and Areas for Motor Vehicle Use*.

⁴ U.S. Forest Service website: <http://www.fs.fed.us/recreation/programs/ohv/>. The full text of the final rule, an interactive travel map, and additional information may also be accessed at this site. Last visited March 10, 2014.

With respect to vehicle class, for example, the Motor Vehicle Use Maps for 2014⁵ for the Apalachicola National Forest, the Ocala National Forest, and the Osceola National Forest reflect the following categories with respect to off-highway vehicle roads and trails:

- Roads Open to Highway Legal Vehicles Only: These roads are open only to motor vehicles licensed under State law for general operation on all public roads within the State.
- Trails Open to Wheeled Vehicles 50 inches or Less in Width: These trails are open only to wheeled, motor vehicles less than 50 inches in width at the widest point on the vehicle.
- Trails Open to Motorcycles Only: These trails are open only to motorcycles. Sidecars are not permitted.
- Special Vehicle Designation: This symbol indicates the road or trail is open to classes of vehicles other than those listed above. Refer to the Seasonal and Special Designation Table for further instructions.
- Seasonal Designation: This symbol, used in conjunction with one of the other road or trail symbols, indicates that the road or trail is open only during certain portions of the year. Refer to Seasonal and Special Designation Table for further instructions.

Operation of any off-highway vehicle on National Forest System lands other than in accordance with the designations as reflected on the maps is prohibited.⁶ It is the identified vehicle class for designated roads and trails on given federal lands that determines which off-highway vehicles are authorized.

Use of Off-Highway Vehicles on State Lands

The 2002 Legislature enacted the T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act⁷ to provide a set of guidelines for the development and maintenance of public lands within the state for off-highway vehicle use.⁸ “Off-highway vehicle” (OHV) is defined in s. 261.03(5), F.S., to include any ATV, two-rider ATV,⁹ ROV, or off-highway motorcycle (OHM) that is not registered and licensed for highway use under chapter 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 nonhighway 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.*

⁵ U.S. Forest Service website: <http://www.fs.usda.gov/main/florida/maps-pubs>. Last visited March 10, 2014.

⁶ 36 C.F.R. 261.13.

⁷ Chapter 261, F.S.

⁸ See the Department of Agriculture & Consumer Services (DACS) website for information on locations approved for off-highway vehicle use on public (and some private) state lands, fees and permits for OHVs in state forests, and State Forest Rules for OHV areas: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Recreation/Off-Highway-Vehicle-Recreation-on-State-Forests-in-Florida>. Last visited March 8, 2014.

⁹ 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.

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 nonhighway tires,
- *Having nonstraddle seating and a steering wheel*, and
- Manufactured for recreational use by one or more persons.¹⁰

ATVs, ROVs, (and OHMs) are the only unlicensed motor vehicles allowed in designated OHV areas.¹¹ No off-highway vehicle may be operated on public roads in the state, except as permitted by the managing local, state, or federal agency.¹²

As is the case on federal lands, use of OHVs on state lands may be restricted given the location. For example, the Croom Motorcycle Area at Withlacoochee State forest permits operation of ATVs and OHMs, but ROVs are not currently authorized.¹³ ATVs, ROVs, and OHMs are authorized on the Off-Highway Vehicle Trail System at Tate’s Hell State Forest.¹⁴

Section 261.20, F.S., provides certain requirements for the operation of OHVs on public lands, including the following:

- A person under 16 must be supervised by an adult while operating an OHV and must have proof of completion of a DACS-approved safety course in this state or another jurisdiction.
- The OHV must be equipped with an operating spark arrester and sound emission limiter.
- OHVs operated at night, where allowed, or when visibility is low, must display a taillight and a headlight, with certain exceptions.

Violations of these requirements include:

- Carrying a passenger on an OHV, unless it is specifically designed to carry an operator and a single person;
- Operating an OHV under the influence of alcohol, a controlled substance, or any prescription or over-the-counter drug that impairs vision or motor function;
- Operation of an OHV by a person under 16 without wearing eye protection, over-the-ankle boots, and a safety helmet; and
- Operating an OHV in a careless or reckless manner that endangers or causes injury or damage to another person or property.¹⁵

A person who violates the requirements commits a noncriminal infraction subject to a fine of at least \$100 and may have the privilege of operating an ATV on public lands revoked. If the

¹⁰ 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.

¹¹ See DACS website: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Recreation/Off-Highway-Vehicle-Recreation-on-State-Forests-in-Florida#rules>. Last visited March 8, 2014.

¹² Section 261.11, F.S.

¹³ See DACS website: <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 10, 2014.

¹⁴ See DACS website: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/State-Forests/Off-Highway-Vehicle-Trail-System-at-Tate-s-Hell-State-Forest#contact>. Last visited March 10, 2014,

¹⁵ Section 261.20(5), F.S.

person acts with intent to defraud or commits a second or subsequent violation, the fine increases to at least \$500.¹⁶

Authorized Use of ATVs by Police Officers

Similar to the provisions of s. 261.20, F.S., s. 316.2074, F.S., also prohibits operation of an ATV on public roads in this state, except as permitted by the managing state or federal agency. However, a four-wheeled ATV may be used by police officers to enforce traffic laws on public beaches designated as public roadways and to travel on public roads within public lands while performing their duties.

For purposes of s. 316.2074, F.S., an ATV is defined almost identically to the definition in s. 261.03(2), F.S., to mean any:

- Motorized off-highway vehicle 50 inches or less in width,
- Having a dry weight of 1,200 pounds or less,
- Designed to travel on three or more nonhighway 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.¹⁷

A violation of s. 316.2074, F.S., is a nonmoving, noncriminal traffic infraction, punishable by a \$30 penalty.

Authorized Use of ATVs on Certain Roadways

Section 316.2123, F.S., likewise prohibits operation of an ATV¹⁸ on public roads in this state, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 mph. A county may exempt itself from this authorization, after a public hearing, by majority vote of the governing body of the county. Alternatively, by majority vote after a public hearing, the county may designate unpaved roadways where an ATV may be operated during the daytime as long as each such designated roadway has a posted speed limit of less than 35 mph and is appropriately marked to indicate permissible ATV use. The ATV operator must be a licensed driver or a minor under the direct supervision of a licensed driver.

Off-Highway Vehicle Titling

Chapter 317, Florida Statutes, 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 definitions of “ATV” and “ROV” for purposes of ch. 317, F.S., are identical to the respective definitions in s. 261.03(2) and (8), F.S.

III. Effect of Proposed Changes:

The bill amends the definitions in ss. 261.03, 316.2074, and 317.0003, F.S., to:

¹⁶ *Id.*

¹⁷ This section also includes two-rider ATVs specifically designed for a single operator and one passenger.

¹⁸ Defined as in s. 317.0003, F.S., which is identical to the definition in s. 261.03(2), F.S.

- Remove from the definitions of “ATV” and “ROV” any reference to the type of seating (straddle vs. nonstraddle) and steering control (handle bars vs. steering wheel);
- Remove from the definition of “ATV” that the vehicle is intended for use by a single operator with no passenger and replace the phrase with “and manufactured for recreational use by one or more persons”; and
- Increase the width of ROVs in the definitions from 64 to 65 inches.

These revisions leave the definitions of ATV and ROV distinguished by width, weight, and possibly the number of nonhighway wheels. Both definitions include that the vehicle is manufactured for recreational use by one or more persons. The type of seating and the steering mechanism no longer distinguish the two vehicles.

The first two revisions potentially authorize an OHV currently defined as an ROV to meet the definition of an ATV; that is, if the vehicle is 50 inches or less in width and 1,200 pounds or less in dry weight, designed to travel on three or more nonhighway tires, and manufactured for recreational use by one or more persons, a vehicle previously defined as an ROV because of nonstraddle seating and a steering wheel now meets the definition of an ATV because reference to straddled seating and handle bars is removed, as is the requirement that the vehicle is intended for use by a single operator with no passenger. Such models do exist, such as the Polaris RZR¹⁹ and the Arctic Cat Wildcat Trail XT,²⁰ for example. These revisions may result in such models being authorized for titling as an ATV and may result in authorized operation on certain federal and state lands, depending upon the given location’s restrictions.

The increase in width from 64 to 65 inches in the definition of ROV may result in more ROVs being titled in Florida. Authorized operation of ROVs will continue to be governed by OHV restrictions at a given location.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ See Polaris website: <http://www.polaris.com/en-us/rzr-side-by-side/rzr-570-eps-trail-le-blue-fire/specs>. Last visited March 10, 2014.

²⁰ See Arctic Cat website: <http://www.arcticcat.com/sidexside/model/wildcattrailxt#lime>. Last visited March 10, 2014.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The DHSMV notes that in fiscal year 2012-2013, only 12,554 off-highway vehicle (ATVs and ROVs) titles were issued statewide. The possible increase in the number of ATV and ROV titles issued “is unable to be determined, but is believed to be extremely nominal. Therefore, the revenue and operational impact on the Department is unable to be forecasted.”²¹

The fee for an original title or transfer title for an off-highway vehicle is \$42.50.²²

B. Private Sector Impact:

Individuals seeking to title models that would qualify as an ATV under the new definition and those seeking to title ROVs 65 inches wide will be subject to titling fees.

C. Government Sector Impact:

See Tax/Fee Issues above.

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

VI. Technical Deficiencies:

Among the violations listed in s. 261.20(5), F.S., subparagraph (a) prohibits carrying a passenger on an off-highway vehicle, unless the machine is specifically designed by the manufacturer to carry an operator and *a single passenger*. Given the revisions to the definitions of ATV, specifically, removing from the current definition that the vehicle is intended for use by a single operator with no passenger and replacing the phrase with “and manufactured for recreational use by one or more persons,” it appears in order to likewise revise the penalty provision to prohibit carrying more passengers than the machine is designed by the manufacturer to carry.

Additionally, the penalty provision in subsection (6) of s. 261.20, F.S., references only ATVs. However, s. 261.20, F.S., applies to operation of off-highway vehicles, including ATVs, ROVs, and OHMs. Changing the “ATV” references in s. 261.20(6), F.S., to “off-highway vehicle” also appears to be in order.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

²¹ DHSMV SB 1024 Bill Analysis, on file in the Senate Transportation Committee.

²² See the DHSMV Schedule of OHV Title and Lien Fees, on file in the Senate Transportation Committee.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
