

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1193 Off-Highway Vehicles

**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Hill

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1024

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Thompson	Miller
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Perkins	Davis
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

Current law defines several types of off-highway vehicles (OHVs). Included in this definition are all-terrain vehicles (ATVs), and recreational off-highway vehicles (ROVs). ATVs, and ROVs are not allowed to be operated on public roads in the state, except as permitted by the managing local, state, or federal agency. The law 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 bill expands the definitions for ATVs and ROVs to:

- Remove any reference to the type of seating (straddle vs. nonstraddle) and steering control (handle bars vs. steering wheel);
- Remove the limitation that an ATV is designed for use by a single operator with no passenger; and
- Increase the width requirement of ROVs in the definitions from 64 to 65 inches.

The bill also revises an OHV violation provision related to operation on public lands. The bill prohibits carrying more passengers than an OHV is designed by the manufacturer to carry and revises the penalty provision to clarify that the penalty applies to all OHV violations, and not just ATVs.

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

There is an indeterminate positive fiscal impact to state and local government revenues. 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.

The bill provides an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The use of OHVs for recreational purposes is a growing trend. OHV use in national parks, including ATVs, snowmobiles, personal watercraft, and others, along with recreational activities such as mountain biking, snow biking, heli-skiing, and aircraft tours, have evolved and gained in popularity.<sup>1</sup> As a result, United States (U.S.) consumers spend over \$66 billion annually on offroading activities (on federal and nonfederal lands combined), and businesses serving off-road recreationists support over 680,000 jobs.<sup>2</sup>

According to the Congressional Research Service:

OHV supporters contend that the vehicles allow greater access to hard-to-reach natural areas, bring economic benefits to communities serving riders, provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; and, with snowmobiles, allow increased access to sites during winter. They assert that technological advances will continue to limit noise and pollution. By contrast, opponents of OHVs in the National Park System assert that these vehicles damage the environment and cultural artifacts, pose safety concerns, and conflict with other forms of recreation.<sup>3</sup>

Not all off-road vehicles are the same. Often, the ATV is confused with the 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.<sup>4</sup>

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.”<sup>5</sup>

#### Use of Off-Highway Vehicles on Federal Lands

In 2005, the United State Department of Agriculture Forest Service announced a new regulation governing OHVs.<sup>6</sup> An OHV 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.

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<sup>1</sup> The Congressional Research Service report on Motorized Recreation on National Park Service Lands, February 8, 2013, p. 1, is available at: <http://www.fas.org/sgp/crs/misc/R42955.pdf>. (Last viewed 3/15/14).

<sup>2</sup> The Outdoor Recreation Economy, 2012, p. 17, is available at: <http://atfiles.org/files/pdf/Outdoor-Recreation-Economy-OIA2012.pdf>. (Last viewed 3/15/14).

<sup>3</sup> The Congressional Research Service report on Motorized Recreation on National Park Service Lands, February 8, 2013, p. 1, is available at: <http://www.fas.org/sgp/crs/misc/R42955.pdf>. (Last viewed 3/15/14).

<sup>4</sup> The Recreational Off-Highway Vehicle Association website is available at: <http://www.rohva.org/ROVvsATV.aspx>. (Last viewed 3/15/14).

<sup>5</sup> Id.

<sup>6</sup> 36 C.F.R. 212, Subpart B, Designation of Roads, Trails and Areas for Motor Vehicle Use, is available at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=70f3f185b0287443f1d197a51ebf13ce&rgn=div6&view=text&node=36:2.0.1.1.3.2&idno=36>. (Last viewed 3/15/14).

- 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.<sup>7</sup>

With respect to vehicle class, the Motor Vehicle Use Maps for 2014 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.
- *Roads Open to All Vehicles*: These roads are open to all motor vehicles, including smaller off-highway vehicles that may not be licensed for highway use (but not to oversize or overweight vehicles under state traffic law).
- *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.
- *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.<sup>8</sup>

Operation of any OHV on National Forest System lands other than in accordance with the designations as reflected on the maps is prohibited.<sup>9</sup> It is the identified vehicle class for designated roads and trails on given federal lands that determines which OHVs are authorized.

### Use of Off-Highway Vehicles on State Lands

The 2002 Legislature enacted the T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act<sup>10</sup> to provide a set of guidelines for the development and maintenance of public lands within the state for OHV use. The act finds that OHVs are becoming increasingly popular in this state and the use of these vehicles should be controlled and managed to minimize negative effects on the environment, wildlife habitats, native wildlife, and native flora and fauna. Also, the act declares that effectively managed areas and adequate facilities for the use of OHVs are compatible with this state's overall recreation plan and the underlying goal of multiple use.<sup>11</sup>

Section 261.03(5), F.S., defines an OHV as any ATV, two-rider ATV<sup>12</sup>, 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 that:

- Is 50 inches or less in width,
- Has a dry weight of 1,200 pounds or less,
- Is designed to travel on three or more nonhighway tires,
- Has a seat designed to be straddled by the operator and handlebars for steering control, and

<sup>7</sup> The U.S. Forest Service website is available at: <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 viewed 3/15/14).

<sup>8</sup> U.S. Forest Service Maps & Publications website: <http://www.fs.usda.gov/main/florida/maps-pubs>. (Last viewed 3/15/14).

<sup>9</sup> 36 C.F.R. 261.13, Subpart A, General Prohibitions, Parks, Forests, and Public Property is available at: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=128231f343e42d49667e99a3452004cd&ty=HTML&h=L&n=36y2.0.1.1.20&r=PART#36:2.0.1.1.20.1.33.16>. (Last viewed 3/15/14).

<sup>10</sup> s. 1, chapter 2002-295, Laws of Florida; codified in chapter 261, F.S.

<sup>11</sup> s. 261.02(1) and (2), F.S.

<sup>12</sup> s. 261.03(11), F.S., defines "Two-rider ATV" as any ATV that is specifically designed by the manufacturer for a single operator and one passenger.

- 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 that:

- Is 64 inches or less in width,
- Has a dry weight of 2,000 pounds or less,
- Is designed to travel on four or more nonhighway tires,
- Has nonstraddle seating and a steering wheel, and
- Is manufactured for recreational use by one or more persons.<sup>13</sup>

ATVs, ROVs, (and OHMs) are the only unlicensed motor vehicles allowed in designated OHV areas.<sup>14</sup> No OHV may be operated on public roads in the state, except as permitted by the managing local, state, or federal agency.<sup>15</sup>

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.<sup>16</sup> ATVs, ROVs, and OHMs are authorized on the OHV Trail System at Tate's Hell State Forest.<sup>17</sup>

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.<sup>18</sup>

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 person acts with intent to defraud or commits a second or subsequent violation, the fine increases to at least \$500.<sup>19</sup>

#### Authorized Use of ATVs by Police Officers

Section 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

<sup>13</sup> 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.

<sup>14</sup> See DACS' website at: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Recreation/Off-Highway-Vehicle-Recreation-on-State-Forests-in-Florida#rules>. (Last viewed 3/15/14).

<sup>15</sup> s. 261.11, F.S.

<sup>16</sup> See DACS' Croom Motorcycle Area at Withlacoochee website 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 viewed 3/15/14).

<sup>17</sup> See DACS' Off-Highway Vehicle Trail System at Tate's Hell State Forest 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 viewed 3/15/14).

<sup>18</sup> s. 261.20(5), F.S.

<sup>19</sup> s. 261.20(6), F.S.

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.<sup>20</sup>

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 OHV 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.<sup>21</sup>

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., also prohibits operation of an ATV<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> The ATV operator must be a licensed driver or a minor under the direct supervision of a licensed driver.<sup>25</sup>

### 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. An owner of an OHV that is required to be titled must apply to the county tax collector for OHV title transactions.<sup>26</sup> An OHV title fee is \$29. DHSMV is required to deposit \$27 into the Incidental Trust Fund (ITF) of the Florida Forest Service of the Department of Agriculture and Consumer Services, and \$2 into the Highway Safety Operating Trust Fund HSOTF). The definitions of ATV and ROV pursuant to ch. 317, F.S., are identical to the respective definitions in s. 261.03(2) and (8), F.S.

## **Proposed Changes**

The bill revises ATV and ROV definitions for purposes of titling, and revises an OHV violation provision related to the operation of OHVs on public lands.

Specifically, the bill amends ss. 261.03(2) and (8), and 317.0003, F.S., to:

- 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

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<sup>20</sup> s. 316.2074(6), F.S.

<sup>21</sup> This section also includes two-rider ATVs specifically designed for a single operator and one passenger.

<sup>22</sup> ATV is defined as in s. 317.0003, F.S., which is identical to the definition in s. 261.03(2), F.S.

<sup>23</sup> s. 316.2123(2), F.S.

<sup>24</sup> Id.

<sup>25</sup> s. 316.2123(3), F.S.

<sup>26</sup> s. 317.0006(4)(c), F.S.

- Increase the width of ROVs in the definitions from 64 to 65 inches.

The bill amends s. 261.20(5), F.S., to revise the violation for carrying a passenger on an OHV, unless it is specifically designed to carry an operator and a single person. The violation is revised to prohibit carrying more passengers than the machine is designed by the manufacturer to carry and is necessitated by the revisions to the definitions of ATV and ROV, some of which are now designed to carry multiple passengers. This also conforms to current ROV industry seating standards of manufacturing such vehicles for use by one or more (multiple) persons.<sup>27</sup>

The bill 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.

These revisions leave the definitions of ATV and ROV distinguished by width, weight, and the number of nonhighway tires. 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 ATVs and ROVs.

The 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 RZR<sup>28</sup> and the Arctic Cat Wildcat Trail XT,<sup>29</sup> 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.

#### B. SECTION DIRECTORY:

Section 1: amends s. 261.03, F.S., revising definitions for ATV and ROV.

Section 2: amends s. 261.20, F.S., revising OHV violations and penalties.

Section 3: amends s. 317.0003, F.S., revising definitions for ATV and ROV.

Section 4: provides an effective date of July 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

Indeterminate. See FISCAL COMMENTS.

##### 2. Expenditures:

None.

<sup>27</sup> Currently, Polaris manufactures OHVs with seating capacity for up to 6 people. This information is available on the Polaris website at: <http://www.polaris.com/en-us/atv-ranger-rzr/choose-model>. (Last viewed 3/25/14).

<sup>28</sup> See the Polaris website at: <http://www.polaris.com/en-us/rzr-side-by-side/rzr-570-eps-trail-le-blue-fire/specs>. (Last viewed 3/15/14).

<sup>29</sup> See the Arctic Cat website at: <http://www.arcticcat.com/sidexside/model/wildcattrailxt#lime>. (Last viewed 3/15/14).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

An owner of an OHV that is required to be titled must apply to the county tax collector for OHV title transactions.<sup>30</sup> 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. Tax collectors may charge an additional branch fee of \$0.50 for each title or decal that it issues.<sup>31</sup>

Expanding the definitions of ATV and ROV could result in an increase in the number OHVs that would be titled. This would have a positive impact on the Incidental Trust Fund, the Highway Safety Operating Trust Fund, and tax collectors. DHSMV is unable to quantify how many vehicles may become eligible but believes the amount to be nominal.<sup>32</sup> Therefore, the fiscal impact to state and local government is indeterminate, but likely insignificant.

Violations of OHV public land operational requirements are noncriminal infractions and punishable by a fine of at least \$100 and revocation of the privilege of operating an ATV on public lands. If the person acts with intent to defraud or for a second or subsequent violation, the fine increases to at least \$500. Clarifying that such penalties apply to all OHV violations, not just ATV violations, may increase violations and payment of civil penalties, and thus, the amount of related funds that would be distributed to state and local governments. Local governments can charge an additional \$78 for first-time or subsequent offenses. The fines are distributed to the following state funds:

- Public Records Modernization Trust Fund;
- Child Welfare Training Trust Fund;
- Juvenile Justice Training Trust Fund;
- General Revenue Fund;
- Emergency Medical Services Trust Fund;
- Brain and Spinal Cord Injury Program Trust Fund;
- Florida Endowment Foundation for Vocational Rehabilitation; and
- Additional Court Cost Clearing Trust Fund.<sup>33</sup>

It is unknown how many new violations will occur pursuant to the violation revision. Therefore, the fiscal impact to the state and local governments is positive indeterminate.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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<sup>30</sup> s. 317.0006(4)(c), F.S.

<sup>31</sup> s. 317.0007(1), F.S.

<sup>32</sup> Id.

<sup>33</sup> Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines, including a Fee Schedule for Recording, Effective July 1, 2013, pg. 28. This document can be viewed at:

[https://www.flclerks.com/Pub\\_info/2013\\_Pub\\_Info/2013\\_Distribution\\_Schedule\\_final\\_with\\_codes.pdf](https://www.flclerks.com/Pub_info/2013_Pub_Info/2013_Distribution_Schedule_final_with_codes.pdf). (Last viewed 3/25/14).

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2014, the Transportation and Highway Safety Subcommittee adopted one amendment to HB 1193 before reporting it favorably as a committee substitute. The amendment revised an OHV violation to prohibit carrying more passengers than an OHV is designed by the manufacturer to carry, necessitated by the revisions to the definitions of ATV and ROV made by the bill. The amendment also revised the penalty to this violation to clarify application to all OHV violations, not just ATV violations.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Highway Safety Subcommittee.