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FISCAL IMPACT REPORT

SPONSOR Gonzales DATE TYPED 2/3/2004 HB 257

SHORT TITLE Off-Highway Motor Vehicle Requirements SB _____

ANALYST Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
		See fiscal implications			

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
(95.0)	(192.0)	(193.0)	Recurring	State road fund (gas tax)
(70.0)	(147.0)	(155.0)	Recurring	State road fund (vehicle registrations)
(35.0)	(74.0)	(78.0)	Recurring	Local gvmt (MV suspense decrease)
895.0	1,032.0	1,075	Recurring	Trail safety fund
27.0	31.0	61.0	Recurring	NM clean and beautiful program
100.0	230.0	460.0	Recurring	Motor vehicle division

(Parenthesis () Indicate Revenue Decreases)

Note: Since the ATV registration would be for a 2-year period, for the first few years ATV registration fee revenue will tend to be significant in odd-numbered fiscal years, and tend to be small in even-numbered fiscal years. The bill includes no transition provision for existing 3-year registrations, so the full revenue impact will not be realized until FY2007 (when 3-year registrations obtained in FY2004 are due for renewal).

Assumptions: 40,000 registered vehicles, plus some unknown number of nonresident permits (+).

SOURCES OF INFORMATION

Department of Tourism
 Department of Transportation
 Taxation and Revenue Department
 Energy, Minerals and Natural Resources Department

SUMMARY

Synopsis of Bill

House Bill 257 proposes comprehensive additions and revisions to the Off-highway Motor Vehicle Act to promote responsible use of snowmobiles, all-terrain vehicles and off-highway motorcycles. The bill sets up a financing mechanism, through a new fund called the trail safety fund, for implementation of the bill. A section-by-section analysis follows:

Section 1. Sets up new fund, called the trail safety fund, as eligible for gas tax distribution;

Section 2. Adds new definitions to the act;

Section 3. Makes technical corrections and clean up for the registration requirements and process;

Section 4. Maintains original registration fee at \$15.00, but reduces validation time from three to two years for residents and creates a ninety day permit for non-residents at same price. Creates a new registration fee, the off-highway user fee, of up to \$40.00 for residents or non-residents. Provides rulemaking authority to Tourism Department. Provides authority for a \$1.00 fee for the New Mexico Clean and Beautiful Program on an annual basis for both residents and non-residents;

Section 5. Provides registration exemptions for off-highway vehicles operated exclusively on private lands and for those used in competitions;

Section 6. Makes technical corrections to statute describing criteria for permit refusal. Stipulates two new subsections for refusal to issue permits: applicant cannot be registered in home state or has not completed requisite training;

Section 7. Makes technical corrections;

Section 8. Makes technical corrections;

Section 9. Adds new section for dealer demonstration certificates, for a fee of \$15.00/vehicle (first three vehicles and \$5.00/vehicle additional vehicles) used as a demonstrator on land not owned by the dealer;

Section 10. Adds new section outlining criteria under which safety training organizations may be licensed and terms of the licenses, i.e., annual renewal, certification by board (see Section 18), etc;

Section 11. Adds new section outlining operation and safety requirements by age and provides for requirements to be met before these motor vehicles may be sold (note: very important and detailed section);

Section 12. Adds new section requiring dealers to provide operational, safety and training information to consumers including information of the potential risks involved;

Section 13. Provides limited exceptions for operation of off-highway vehicles near or on public roads or highways;

Section 14. Provides limited exceptions for operation of off-highway vehicles near or on public roads or highways;

Section 15. Makes technical corrections;

Section 16. Makes revisions to statute requiring accident reports of more than \$250 in damage to law enforcement.

Section 17. Makes revisions to allow law enforcement officers to request proof of training certification of drivers.

Section 18. Creates the Off-highway Motor Vehicle Safety Board made up of 23 members (nine ex-officio and 14 appointed members) and outlines its policy-making to certify training programs, set safety standards, supplement the Clean and Beautiful Program, and set criteria for locating ATV parks, trails and other facilities.

Section 19. Creates the trail safety fund to be administered by the Tourism Department; the fund will receive 0.013 percent from the gas tax distribution (state road fund) and will receive all fees identified previously in bill; provides for earmarked use of fund, namely to develop and maintain trails, staging areas and to promote safety in this sport;

Section 20. Provides for penalties of violation of this act.

Section 21. Repeals the Snowmobile Act.

Section 22. Makes the effective date January 1, 2005.

Significant Issues

HB257 is designed to address the proliferation of off-highway vehicle recreation to ensure public and environmental safety. As this sport grows in popularity, fatalities and injuries have increased. The Department of Tourism cites a Consumer Products Safety Commission report that shows a 50 percent increase from 1997 to 2001 in all-terrain vehicles driving hours. Additionally, outdoor enthusiasts seek to find consensus with off-highway vehicle enthusiasts on use of public lands and forests.

FISCAL IMPLICATIONS

HB 257 does not contain an appropriation, but does provide for continuing appropriations to the Tourism Department from the new fund created in the bill. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

Both NMDOT and TRD report that Section 4(A) directs the \$15 registration fee "to the division". The bill is not clear about whether this revenue goes to MVD to offset expenses, to the

MV Suspense Fund or to the Trail Safety Fund. Section 19(C) permits MVD to receive distributions from the Trail Safety Fund for any expenses incurred in carrying out the provisions of the Off-Highway Motor Vehicle Act.

ADMINISTRATIVE IMPLICATIONS

TRD will experience an increased workload, however, access to the fund will allow it to absorb its incremental cost.

TECHNICAL ISSUES

TRD reports the following technical issues:

Section 11, paragraph A(2) establishes a safety violation if the person drives the off-highway motor vehicle while intoxicated. The language in this section, “incapable of reasonable operation”, is not the same language used under Section 66-8-102. Section 66-8-102 has per se limits but also states that someone is DWI if it “renders him incapable of safely driving a vehicle.” The courts have interpreted that phrase to mean someone is DWI if the ability to drive a vehicle is impaired to the slightest degree. It is not defined as a matter of “reasonable operation.” The language should be the same.

Secondly, under Section 66-8-102, a refusal to be tested is an aggravated offense. There is no requirement, however, in this bill that a driver of an OHMV submit to a chemical test. An OHMV is not considered a motor vehicle for purposes of DWI and the Implied Consent Act. The easiest solution is to put an OHMV under the definition of a motor vehicle. The alternative is to provide that an OHMV can violate the Implied Consent Act by adding such language under paragraph A(2).

MFV/yr