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## FISCAL IMPACT REPORT

**SPONSOR** Feldman                      **DATE TYPED** 3/16/05                      **HB** \_\_\_\_\_

**SHORT TITLE** Off-Highway Vehicle Safety and Fee Requirements                      **SB** 252/aSPAC/aSFC/aHJC

**ANALYST** Ford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative				

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	See Narrative		Recurring	Trail Safety Fund
	See Narrative		Recurring	New Mexico Clean and Beautiful Program
	See Narrative		Recurring	Motor Vehicle Division
	See Narrative		Recurring	Motor Vehicle Suspense Fund
	See Narrative		Recurring	Game Protection Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Energy, Minerals and Natural Resources Department (EMNRD)

Department of Health (DOH)

Public Defender Department (PDD)

Department of Public Safety (DPS)

Department of Transportation (DOT)

## SUMMARY

### Synopsis of HJC Amendment

The House Judiciary Committee amendment makes several changes to Senate Bill 252.

The amendment changes the applicability of the Off-Highway Motor Vehicle Act by specifying that the Act shall not apply to persons who operate OHVs on privately held lands. In addition, the amendment removes language that exempted OHVs from the Act only if they were operated on private land held by the OHV owner, thereby exempting OHVs operating exclusively on any private land, regardless of who owns the land.

The amendment adds two more members to the OHV Safety Board: a representative of the U.S. bureau of land management and a representative of the U.S. forest service, both of whom will be appointed by the governor. The amendment specifies that these representatives shall not be paid per diem or reimbursement for attending meetings and makes conforming changes to the terms of board members.

The amendment reduces the authority of the OHV Safety Board by changing two provisions in the section regarding powers and duties of the board. The board's power to determine facility and trail locations is removed and replaced by the power to recommend facility and trail locations to the state, county, tribal or local governing body or private entity that owns or administers land upon which the park, facility or trail is located. Similarly, the board's power to restore or close tracks or trails is removed and replaced by a power to recommend restoration or closure to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the tracks or trails are located.

### Synopsis of SFC Amendment

The Senate Finance Committee amendment clarifies the disposition of fee revenue when fees are issued by the Game and Fish Department. For each \$17 fee collected by Game and Fish, \$7 shall be deposited into the game protection fund, \$5 shall go to the MVD to defray the cost of making and issuing registration certificates, validating stickers and non-resident permits, and \$5 shall be deposited in the motor vehicle suspense fund.

The amendment also removes the age restriction from the civil liability provision, thereby establishing that the failure to wear a helmet by *any* OHV operator shall not constitute fault or negligence and shall not limit or apportion damages.

### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment adds to the list of vehicles exempt from the Act OHVs owned by non-residents and used only for organized and endorsed competition, provided that the use is not on a rental basis. The amendment makes a clarifying addition to the provision regarding supervision of OHV operators under age 18 by adding, allowing 15 year olds with an instructional permit or provisional license, in addition to a driver's license, to operate OHVs without adult supervision.

The amendment makes a clarifying addition of "all-terrain" to the provision regarding acceptable

vehicles for riders under the age of 10.

The Senate Public Affairs Committee amendment also exempts from the prohibition on sales of vehicles that do not meet noise requirements vehicles that are sold or offered for sale only for organized competition.

Finally, the amendment changes the provision prohibiting OHV use on state park lands by allowing use as designated and permitted by the secretary of energy, minerals and natural resources.

### Synopsis of Original Bill

Senate Bill 252 repeals the existing Snowmobile Act and creates the Off-Highway Motor Vehicle Act, which raises fees for the registration of Off-Highway Motor Vehicles (OHVs), requires non-resident registration of OHVs, imposes safety and training requirements, creates a new board, creates the new Trail Safety Fund, and provides for enforcement and penalties.

### Fees and Disposition

Senate Bill 252 increases existing registration fees and creates new fees for OHV owners. The bill also provides for the disposition of fees. Residents would be required to register their OHVs every two years. Current law requires registration every 3 years. Non-residents whose vehicles are not registered in other states would pay fees for a non-resident permit.

The bill establishes the following fees:

Fee	Disposition
\$17 registration/non-resident permit fee	\$5 to Motor Vehicle Division \$12 to the Motor Vehicle Suspense Fund
Up to \$30 (to be determined by the Tourism Department)	Trail Safety Fund
\$1.00	New Mexico clean and beautiful program
\$7.50 duplicate registration certificate/non-resident permit. (The current fee is \$1)	Motor Vehicle Division for the cost of issuing duplicates

In addition, for every fee collected by the Game and Fish Department, \$7 shall be distributed to the Game Protection Fund.

### Exemptions

Senate Bill 252 provides registration exemptions for OHVs used on private land and closed courses.

### Safety Requirements

Persons under 18 must complete an approved OHV safety training course, for which the person must have parental permission. A person under 18 must also wear approved eye protection and a helmet. Senate Bill 252 also requires supervision and specific training for younger OHV operators. A person under the age of 10 shall not operate on OHV unless it is age-appropriate and size-fit (as established by the board).

The bill establishes new requirements for the safe use of OHVs, including limitations on speed,

prohibition against operating an OHV while intoxicated, and limitations on noise.

The bill requires dealers to be licensed and to distribute recommended safety information.

Off-Highway Motor Vehicle Safety Board

Senate Bill 252 creates the OHV Safety Board, with a membership of nine ex-officio members and 15 appointed members. The board’s duties include:

- Establishing criteria for safety training courses and approving courses that meet the criteria;
- Developing standards for eye protection and safety helmets;
- Determining OHV park, facility and trail locations;
- Restoring or closing OHV tracks or trails if they pose significant or irreversible environmental damage, danger to users or public nuisance;
- Accepting and reviewing grant applications for park, trails and facilities.

Effective Date: Senate Bill 252 takes effect January 1, 2006

**FISCAL IMPLICATIONS**

Senate Bill 252 creates new fees and provides for their disposition. It also creates the Trail Safety Fund.

The total fiscal impact is indeterminate because so many factors are unknown. For example, the total number of OHVs in the state is not known. It is believed that many existing OHVs owners have not registered their vehicles in accordance with current law. In addition, it is not known how many non-residents would pay for permits each year.

The Department of Transportation offers a revenue estimate that provides a “best case scenario” estimate. The estimate assumes there are 60,000 OHVs in the state, all of which would be registered according to the new law. It also assumes that registration renewals are fairly even from year to year. Finally, the DOT estimate assumes that the Tourism Department will set the Trail Safety Fee at the full \$30 allowed in the bill.

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY06	FY07	FY08		
0 +	0 +	90 +	Recurring	State Road Fund (2 yr. registration)
0 +	0 +	30 +	Recurring	Local Governments (2 yr. registration)
50 +	115 +	166 +	Recurring	Motor Vehicle Division (registration)
*	*	*	Recurring	Department of Game and Fish
300 ++	690 ++	995 ++	Recurring	Trail Safety Fund (user permit fee)
10 ++	23 ++	33 ++	Recurring	NM Clean and Beautiful Program

(Parenthesis ( ) Indicate Revenue Decreases)

The “+” indicates additional revenue from nonresident annual registration fees.

The “++” indicates additional revenue from nonresident annual user permit fees and nonresident 90-day permit fees.

\* Department of Game and Fish – the number of transactions that would be conducted by the Department of Game and Fish is unknown.

Senate Bill 252 would take effect half way through FY 06, so the estimate shows revenues for fees collected during half the fiscal year. Full revenue impact occurs in FY 08, when existing 3-year registrations would expire. FY 09 would show a similar revenue increase. Beyond FY 09, the revenue estimate for each year would be the same as the estimate 2 years prior, plus any growth in registrations.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC is concerned about including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

### **TECHNICAL ISSUES**

EMNRD notes a possible technical problem in Section 5(B) which exempts from registration those vehicles that are operated on privately held land as long as the vehicle owner has paid the gross receipts tax in lieu of the motor vehicle tax and registration fees. EMNRD writes that it is not clear how this would be enforced.

EMNRD also suggests an amendment that would allow the secretary to permit use in certain state parks:

Page 16, line 7, after NMSA 1978, insert “except in areas designated by the secretary and permitted by regulations adopted by the secretary.”

DOT notes that on page 13, line 24, the term “driver’s license” should be replaced with the terms “instructional permit or provisional license” applicable to persons age 15 through 17.

DOT also notes a technical conflict regarding the fee collected by the Game and Fish Department. Section 4 provides that \$7.00 of every fee collected by the Game and Fish Department shall be deposited in the Game Protection Fund. However, this section does not indicate how the disposition of the remainder of the fee should be altered. This would leave the Motor Vehicle Division to determine how to distribute the fee without guidance from the legislature.

### **OTHER SUBSTANTIVE ISSUES**

In its analysis of Senate Bill 252, DOH writes:

“The common perception about ATVs (all terrain vehicles) is that they are harmless toys, when in many situations, and particularly in rough terrain, they are actually more dangerous than motorcycles or automobiles. An average adult model weighs 550 lbs., and some are capable of speeds of 70 mph or more, with sales of these high speed models increasing threefold between 1989 and 1997.

“For 2002, the National Electronic Injury Surveillance System (NEISS) of hospital data estimated that children in New Mexico under the age of 16 involved in ATV crashes and rollovers account for some 202 hospitalizations, including 45 hospitalizations of children under the age of 10, nearly one every week of the year.

“During 2002, there were 123 emergency room visits resulting from ATV crashes at UNM Hospital in Albuquerque. According to the Center for Injury Prevention, Research and Education (CIPRE), the costs incurred for these emergency room visits exceeded 2 million dollars, of which at least 38%, or \$760,000 was billed directly to the government because of uninsured drivers.”

**EF/sb:lg:yr**