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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13
 SPONSOR Sanchez, C. LAST UPDATED 03/11/13 HB _____
 SHORT TITLE Off-Highway Vehicle Act Exemptions SB 472/aSCORC
 ANALYST Soderquist

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	indeterminate	indeterminate	indeterminate	indeterminate		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 201

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Department of Transportation (NMDOT)
- Department of Public Safety (DPS)
- Administrative Office of the Courts (AOC)
- Taxation and Revenue Department (TRD)
- Department of Health (DOH)
- Department of Game and Fish (DGF)
- Attorney General's Office (AGO)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee (SCORC) substitute for HB 472 makes significant changes to the changes to Sections 66-3-1011 and 1012 of the Off-highway Motor Vehicle Act proposed by the original legislation.

First, the committee substitute would alter the proposed amendment to Section 66-3-1011 to require additional safety equipment for off-highway vehicles used on roadways, including windshields and wipers, rear view mirrors, and seatbelts, and would restrict their use to roadways that have posted speeds of 35 m.p.h. or less, instead of 50 m.p.h. Second, the committee substitute would additionally require that the vehicle be registered, have liability insurance coverage, and that the driver have a valid driver's license. Third, the original bill provided that

such on-road use would be permitted only within counties or municipalities that had approved such use by ordinance. In contrast, the committee substitute would allow on-road use, as provided in the bill, on a state-wide basis, with exceptions where a local authority or the Department of Transportation have prohibited such use on roadways within their respective jurisdictions in the interest of safety.

The committee substitute eliminates the original bill's proposed amendment to Section 66-3-1012, relating to the use of roadways to access to areas designated for off-highway motor vehicle use.

According to the response from the Administrative Office of the Courts (AOC), the SCORC amendment relating to vehicle registration, insurance or evidence of responsibility, and a valid driver's license would increase penalties for individuals not in compliance with the proposed legislation from penalty assessment misdemeanors to regular misdemeanor or in some cases, felonies. This amendment could, therefore, have an additional impact on caseloads in courts and could potentially lead to the need for additional resources.

Synopsis of Original Bill

Senate Bill 472 amends the Off-Highway Motor Vehicle Act, by providing a new exemption and two new exceptions:

In Sec. 66-3-1005, relating to exemptions for certain parties or situations for operating off-highway motor vehicles, SB 472 amends subsection F to include commercial use, permitting use by such vehicle operators on privately held lands for agricultural or commercial operations.

In Sec. 66-3-1011, relating to prohibited areas for using off-highway motor vehicles, SB 472 provides a new exception for operations on paved streets or highways, by inserting a new subsection C, which provides that all-terrain vehicles (ATVs), recreational off-highway vehicles, utility terrain vehicles or side-by-sides that are (1) equipped with headlights, brake lights, horns and turn signal indicators and (2) whose operators follow all applicable traffic and roadway laws, are permitted to be driven on roadways rated for speeds of 50 mph or less that are located within municipalities or counties that have adopted an ordinance to provide for *on*-highway use of such vehicles.

In Sec. 66-3-1012, relating to driving off-highway motor vehicles on roads adjacent to highways, SB 472 inserts a new provision (2) permitting vehicles with a validating sticker or nonresident permit to be driven on roadways rated for speeds of 50 mph or less for the purpose of gaining access to or returning from areas designed for operation of off-highway vehicles, provided that the roadway is the shortest possible route, no other route is available, there is no shoulder, and the vehicle is equipped with headlights, brake lights, horns and turn signal indicators and the operator follows all applicable traffic and roadway laws.

Penalties for violation of the Off-Highway Motor Vehicle Act are penalty assessment misdemeanors, although subsequent violations are increased.

FISCAL IMPLICATIONS

According to the analyses from the responding agencies, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. According to the response from the Administrative Office of the Courts (AOC), any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. These potential costs are not entered in the estimated additional operating budget table above.

SIGNIFICANT ISSUES

The analyses from the responding agencies stated a number of concerns about the proposed legislation with reference to the potential for decreased safety and increased mortality. As an example, the response from the Department of Health (DOH) made several points – several of which were also mentioned in the response from the New Mexico Department of Transportation (NMDOT).

First, the Special Vehicle Institute of America, the principal safety organization supported by the off-highway vehicle industry, makes the following policy statement specific to the issue of Off Highway Vehicles (OHVs) of which ATV's are a large part: "OHV's are designed, manufactured and sold for off-road use only. On-road vehicles must be manufactured and certified to comply with U.S. Department of Transportation Federal Motor Vehicle Safety Standards (FMVSS). These safety standards consist of extensive and detailed compliance requirements. Since ATVs are not intended to be used on-road, they are not designed, equipped or tested to meet such standards."

Second, some OHVs and many ATVs are equipped with a solid rear axle that turns both rear wheels at the same speed. Such ATVs are not designed to turn without slipping one rear wheel. Consequently, turning an ATV on high traction surfaces, such as paved streets, can be difficult when compared to turning in the off-road environment, even if the off-road tires could be replaced by a street legal tire. Permitting street use of ATVs, including modified vehicles, would be in conflict with manufacturers' intentions on their proper use, and would be contrary to federal safety requirements.

Third, the U.S. Consumer Product Safety Commission (CPSC) advises that All-Terrain Vehicle (ATV) never be driven on paved roads. Fourth, the National Highway Traffic Safety Administration (NHTSA) has defined motor vehicles "as vehicles that are driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, or highways". The ATV is not included in NHTSA's definition of a motor vehicle, and it is not built with public streets, roads and highways in mind.

The DOH also emphasized ATV fatality statistics. One U.S. Consumer Product Safety Commission (CPSC) study shows that between 1997 and 2002, 40 percent of ATV fatalities involved operation on paved roads, despite the fact that vehicle labels and owner's manuals clearly warn against such use. Another U.S. CPSC study of 3,200 ATV-related deaths that occurred between 1985 and 1996 found that the most frequently reported hazard pattern (56 percent of all ATV incidents) involved collisions and 35 percent of these involved collisions with motorized vehicles.

The AOC response states that a number of states have regulations similar to existing New Mexico statutes related to ATVs, a result of a recognition that ATVs are not designed for use on paved roads.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 201 is duplicate legislation.

TECHNICAL ISSUES

It is unclear whether operators would be required to have “motor vehicle” driver licenses in order to be allowed to operate OHVs on roadways rated for speeds of fifty miles per hour or less. SB 472 makes no clear distinction for age, driver’s licensure and operation of OHVs.

The current Off-Highway Act allows operators 10 years of age and older to operate an OHV if supervised by a licensed driver over the age of 18. However, the current Graduated Driver Licensing laws for motor vehicles do not allow for a permit or license for any applicant under the age of 15. Further complicating the regulatory evaluation, operators 13 years of age may operate an off-highway motor vehicle if they have a valid motorcycle license and off-highway motor vehicle safety permit without supervision.

RS/blm