

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 738

SPONSOR: Transportation Committee and Senator King

SUBJECT: Off-Highway Vehicles

DATE: March 22, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAuliffe	Meyer	TR	Favorable/CS
2.	_____	_____	AG	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

This CS creates the ~~A~~Florida Off-Highway-Vehicle Safety and Recreation Act~~@~~, which provides for the expanded, managed use of off-highway vehicles on public lands. The CS would provide a system of state-owned off-highway-vehicle recreation areas and trails within Florida, funded through moneys generated from the titling and registering of certain off-highway vehicles. The CS provides all off-highway vehicles in the state, purchased after the effective date of this CS, or which are used on public lands must be titled, and all off-highway vehicles in the state, which are used on public lands must be registered.

An Off-Highway-Vehicle Recreation Advisory Committee is created within the Division of Forestry of the Department of Agriculture and Consumer Services (DACS) to:

- Establish policies to guide DACS regarding the off-highway-vehicle recreational program and the system of off-highway-vehicle recreation areas and trails;
- Make recommendations to DACS regarding off-highway-vehicle safety, training, and rider-education programs;
- Review and make recommendations regarding DACS's proposed budget of expenditures from the trust fund;
- Make recommendations regarding all capital outlay expenditures from the trust fund; and
- Review grant applications requesting moneys from the trust fund to create, operate, manage, or improve off-highway-vehicle recreation areas or trails within the state.

The CS creates the ~~A~~Florida Off-Highway-Vehicle Titling and Registration Act~~@~~which establishes rules, regulations, and procedures governing off-highway vehicle titling and registration. The act also provides a fee structure to be administered by the Department of Highway Safety and Motor Vehicles (DHSMV).

This CS substantially amends sections 215.22, 316.2074, and 375.315; and creates chapter 261 of the Florida Statutes.

II. Present Situation:

Section 375.315, F.S., authorizes the Fish and Wildlife Conservation Commission to collect a \$10 fee, and issue a registration certificate and decal for off-road vehicles operated upon public lands. Any person who operates an off-road vehicle on public lands without the proper registration certificate and decal is guilty of a non-criminal traffic infraction punishable by a fine of \$36.

The only facility on state land, managed by the Division of Forestry within the DACS, currently allowing managed off-highway vehicles is the Croom Motorcycle Area within the Withlacoochee State Forest. This facility is managed by the Division of Forestry within the DACS. The Croom Motorcycle Area sells annual permits for \$25. In 1999, they sold approximately 11,000 permits, taking in approximately \$200,000.

Currently, the federal Recreational Trails Program has matching funds available for off-highway vehicle recreation programs in each state. However, Florida does not qualify for these funds because the state has no off-highway vehicle recreation program nor any matching funds.

III. Effect of Proposed Changes:

The Florida Off-Highway Vehicle Safety and Recreation Act

This CS creates chapter 261, F.S., or the ~~A~~Florida Off-Highway Vehicle Safety and Recreation Act.[@]

Section 261.02, F.S., is created to provide Legislative intent concerning the increased popularity of off-highway vehicles and to express the need for effective management in order to minimize the possible negative impacts of such vehicles on the environment. The CS further provides it is the intent of the Legislature that existing and new off-highway-vehicle recreational areas be managed to sustain long-term use and the environment.

Section 261.03, F.S., is created to provide the following definitions for use in chapter 261, F.S.:

- "Advisory committee" means the Off-Highway- Vehicle Recreation Advisory Committee created by s. 261.04.
- "ATV" means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure 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.
- "Department" means the Department of Agriculture and Consumer Services.
- "Division" means the Division of Forestry of the Department of Agriculture and Consumer Services.

- "OHM" or "off-highway motorcycle" means any motor vehicle used off the roads or highways of this state which has a seat or saddle for the use of the rider and is designed to travel with not more than two wheels in contact with the ground, but excludes a tractor or a moped.
- "Off-highway vehicle" means any ATV or OHM used off the roads or highways of this state for recreational purposes, and which is not registered and licensed for highway use under chapter 320.
- "Program" means the Off-Highway-Vehicle Recreation Program.
- "Public lands" means lands within the State of Florida which are available for public use and which are owned, operated or managed by a federal, state, county or municipal governmental entity.
- "System" means the state-owned off-highway-vehicle recreation areas and trails within the state.
- "Trust fund" means the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services.

The Off-Highway-Vehicle Recreation Advisory Committee

Section 261.04, F.S., creates the Off-Highway-Vehicle Recreation Advisory Committee within the division of Forestry. The section provides the Commissioner of Agriculture will appoint 9 members to the advisory committee. The commissioner must consider the place of residence of appointees to ensure statewide representation. The advisory committee must consist of: one representative of DACS; one representative of DHSMV; one representative of the Florida Department of Environmental Protection's Office of Greenways and Trails; one representative of the Fish and Wildlife Conservation Commission; one citizen with scientific expertise in disciplines relating to ecology, wildlife biology, or other environmental sciences; one representative of a licensed off-highway-vehicle dealer, and three representatives of off-highway-vehicle recreation groups. The section provides for 2 year terms for advisory committee members, and provides members may not be paid but may be reimbursed for expenses incurred in the performance of their duties.

Section 261.05, F.S., provides for the duties and responsibilities of the advisory committee. The section provides the advisory committee must:

- Establish policies to guide the DACS regarding the off-highway-vehicle recreational program and the system of off-highway-vehicle recreation areas and trails.
- Make recommendations to the DACS regarding off-highway-vehicle safety, training, and rider-education programs.
- Be fully informed regarding all governmental activities affecting the program.
- Be informed regarding off-highway-vehicle impacts and effects on the environment, wildlife habitats, and native flora and fauna, and must make recommendations to avoid or minimize adverse environmental impacts and promote sustained long-term use.
- Be fully informed regarding the inventory of off-highway-vehicle access and opportunities.
- Meet at various times and locations throughout the state to receive comments on the implementation of the program.

- Review and make recommendations annually regarding the DACS's proposed budget of expenditures from the designated off-highway vehicle funds in the trust fund, which may include providing funds to match grant funds available from other sources.
- Make recommendations regarding all capital outlay expenditures from the trust fund proposed for inclusion in the budget.
- Review grant applications submitted by any governmental agency or entity, or non-governmental entity, requesting moneys from the trust fund to create, operate, manage, or improve off-highway-vehicle recreation areas or trails within the state; protect and restore affected natural areas in the system, or provide off-highway-vehicle driver education. The advisory committee shall recommend to the DACS approval or denial of such grant applications based upon criteria established by the advisory committee.

Section 261.06, F.S., provides for the following functions, duties, and responsibilities of the DACS:

- Coordination of the planning, development, conservation, and rehabilitation of state lands in and for the system.
- Coordination of the management, maintenance, administration, and operation of lands in the system, and the provision of law enforcement and appropriate public safety activities.
- Management of the off-highway vehicle funds in the trust fund and approval of the advisory committee's budget recommendations.
- The implementation of the program, including the ultimate approval of grant applications submitted by governmental agencies, or entities or non-governmental entities.
- Coordination to help ensure compliance with environmental laws and regulations of the program and lands in the system.
- The implementation of the policies established by the advisory committee.
- Provision of staff assistance to the advisory committee.
- Preparation of plans for lands in, or proposed to be included in, the system.
- Conducting surveys and the preparation of studies as are necessary or desirable for implementing the program.
- Recruitment and utilization of volunteers to further the program.
- Rulemaking authority to implement the provisions of ss. 261.01 through 261.10.

Section 261.07, F.S., provides that, in consultation with the advisory committee, DACS must publish a guidebook which includes applicable laws and regulations, trail and facility maps, and information regarding the responsibilities of users of the facilities and trails. The section provides the guidebook may include other public areas and trails, and facilities for the use of off-highway-vehicles. The guidebook must be sold at a price, which covers the cost of preparing, printing and distributing the guidebook, and must be available for distribution no later than October 1, 2002.

Section 261.08, F.S., provides for the repair, maintenance, and restoration of off-highway-vehicle areas, trails, and lands. The section provides the highest priority for management of the system is the safety of the public; the appropriate use of lands, and the conservation of the environment, wildlife habitats, and native flora and fauna in the system. The section provides the public land management agency must monitor the system to determine compliance with applicable environmental laws and regulations, and take appropriate action as necessary.

Section 261.09, F.S., provides the public land management agency may contract with private persons or entities and enter into cooperative agreements with other public agencies for the maintenance of the system, including public law enforcement agencies.

Section 261.10, F.S., provides state off-highway-vehicle recreation areas and trails must be designated and maintained for recreational travel by off-highway vehicles, not generally suitable or maintained for normal travel by conventional two-wheel-drive vehicles, and foot traffic.

Section 261.11, F.S., provides no off-highway-vehicle may be operated on public roads, streets or highways. A violation of this section is a non-criminal traffic infraction punishable as provided in chapter 318 (\$30 fine).

Section 316.2074, F.S., is amended to redefine the term “all-terrain vehicle.” The definition increases the weight of an all-terrain vehicle from 600 to 900 pounds, and removes references to metric measures.

The Florida Off-Highway-Vehicle Titling and Registration Act

Section 3 designates section 3 through 20 of this CS as the “Florida Off-Highway-Vehicle Titling and Registration Act.”

Section 4 provides it is the Legislature’s intent that all off-highway vehicles in the state, purchased after the effective date of this CS, or which are used on public lands must be titled, and all off-highway vehicles in the state, which are used on public lands must be registered. Out-of-state off-highway-vehicles are not required to be registered and titled and governmental owned off-highway-vehicles only pay a registration and titling fee to cover administrative costs.

Section 5 provides definitions for use in sections 3 through 20. The section provides the term:

- “ATV” means any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator and with no passenger.
- “Dealer” means any person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute off-highway vehicles. Such person must have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.
- “Department” means the Department of Highway Safety and Motor Vehicles.
- “Florida resident” means a person who has had a principal place of domicile in this state for a period of more than 6 consecutive months, who has registered to vote in this state, who has made a statement of domicile pursuant to section 222.17, Florida Statutes, or who has filed for homestead tax exemption on property in this state.
- “OHM” or “off-highway motorcycle” means any motor vehicle used off the roads or highways of this state which has a seat or saddle for the use of the rider and is designed to

travel with not more than two wheels in contact with the ground, but excludes a tractor or a moped.

- “Off-highway vehicle” means any ATV or OHM used off the roads or highways of this state for recreational purposes, which is not registered and licensed for highway use pursuant to chapter 320.
- “Owner” means a person, other than a lienholder, having the property in or title to an off-highway vehicle, including a person entitled to the use or possession of an off-highway vehicle subject to an interest held by another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- “Public lands” means lands within the State of Florida which are available for public use and which are owned, operated or managed by a federal, state, county or municipal governmental entity.

Section 6 provides the administration of the titling and registering of off-highway-vehicles is the responsibility of the DHSMV.

Section 7 authorizes DHSMV to adopt rules to administer the provisions of this act.

Off-Highway-Vehicle Titling

Section 8 provides all off-highway-vehicles purchased by a resident of Florida after the effective date of this act or which are operated on public lands must be titled, and any such vehicle must have the title transferred within 30 days after the sale of the vehicle. The section provides for a \$10 fee for title transfer applications after the 30-day period. Five dollars of that fee is retained by the county tax collector.

The section further provides: the certificate of title is prima facie evidence of the ownership of the off-highway-vehicle; for the cancellation of a title if the vehicle is destroyed or abandoned; and a design for the title certificate. The section provides a service charge of \$4.25 for the issuance, duplication, or transfer of any title, and a service charge of \$1.25 for each application which is handled in connection with the recordation or notation of a lien on an off-highway vehicle which is not in connection with the purchase of such vehicle. The service charge is retained by DHSMV for each handled directly by DHSMV. Otherwise, the service charge is retained by the tax collector who handles the application. The section further authorizes tax collectors to impose an additional service charge of 50 cents when a transaction occurs in a tax collector branch office.

Section 9 provides the owner of an off-highway vehicle that is required to be titled must apply to the county tax collector for a certificate of title. The application must include the true name of the owner, the residence or business address of the owner, and a complete description of the vehicle. The application must be signed by the owner and must be accompanied by a fee of \$29.

The section provides proof of ownership must be established by the owner when applying for a title. Such proof may be demonstrated with a bill of sale, a manufacturer's statement of origin, an affidavit of ownership for off-highway vehicles purchased before the effective date of this act, or any other document acceptable to DHSMV.

To apply for a title upon transfer of ownership of an off-highway vehicle, the new owner must surrender to DHSMV the last title document issued for that vehicle. The document must be properly executed. The section defines proper execution to include the previous owner's signature and certification that the off-highway vehicle to be transferred is debt-free or is subject to a lien. If a lien exists, the previous owner must furnish the new owner, on forms supplied by the DHSMV, the names and addresses of all lienholders and the dates of all liens, with a statement from each lienholder that the lienholder has knowledge of and consents to the transfer of title to the new owner.

The section provides an application for an initial title or a title transfer must include payment of the applicable state sales tax or proof of payment of such tax, except for off-highway vehicles purchased or transferred before the effective date of this act.

Section 10 provides DHSMV may issue a duplicate certificate of title upon application if DHSMV is satisfied the original certificate has been lost, destroyed, or mutilated. A fee of \$15 shall be charged for issuing a duplicate certificate. An addition fee of \$7 must be charged for expedited service in issuing a duplicate certificate of title. The DHSMV shall issue each certificate of title applied for under this subsection within 5 working days after receipt of a proper application or refund the additional \$7 fee upon written request by the applicant.

If, following the issuance of an original, duplicate, or corrected certificate of title by DHSMV, the certificate is lost in transit and is not delivered to the addressee, the owner of the off-highway vehicle or the holder of a lien may, within 180 days after the date of issuance of the title, apply to DHSMV for reissuance of the certificate of title free of charge.

The section provides DHSMV must implement a system to verify that the application is signed by a person authorized to receive a duplicate title certificate if the address shown on the application is different from the address shown for the applicant on the records of DHSMV.

Section 11 provides any person selling a new off-highway vehicle in this state must furnish a manufacturer's statement of origin to the purchaser. The statement must: be signed and dated by an authorized representative of the manufacturer; indicate the complete name and address of the purchaser; include a complete description of the vehicle; and contain as many assignments as necessary to show title in the name of the purchaser.

The section further provides it is unlawful for an off-highway-vehicle manufacturer, manufacturer's representative, or dealer to issue a manufacturer's certificate of origin describing an off-highway vehicle with the knowledge that the description is false or that the off-highway vehicle described does not exist. It is unlawful for any person to obtain or attempt to obtain a certificate of origin with the knowledge that the description is false or that the off-highway vehicle does not exist. The section provides any person who violates this subsection is guilty of a felony of the third degree.

Off-Highway-Vehicle Registration

Section 12 provides all off-highway vehicles operated on public lands in Florida, with the exception of off-highway vehicles owned by non-Florida residents, must be registered within 30 days after purchase. The section further provides nothing in this CS prohibits the owner, operator, or manager of public lands containing improved and maintained off-highway-vehicle recreation areas or trails from charging an entrance fee for use of such lands to offset the costs of operation and maintenance of such off-highway-vehicle facilities.

Section 13 provides the owner of each off-highway vehicle that requires registration in this state must file a registration application with the county tax collector. The application must provide the owner's name and address, residency status, a Florida identification card number such as a driver's license number, and a complete description of the vehicle to be registered, and must be accompanied by a fee of \$25. Proof of ownership must be established by presenting a title for the off-highway vehicle.

The section provides DHSMV must issue a certificate of registration and a registration number upon submittal of a complete application. DHSMV must furnish with each certificate issued, a decal signifying the years during which the certificate is valid and containing the assigned registration number. Such decal must be affixed to the rear of the off-highway vehicle.

Section 14 provides an off-highway-vehicle certificate of registration is valid through the owner's next birthday. If the owner's birthday falls within the first 3 months after issuance of the certificate of registration, the certificate is valid through the owner's following birthday. However, a certificate of registration may not be valid for more than 15 months. The section provides DHSMV must provide for annual re-registration of off-highway vehicles either in person at the county tax collector's office or by mail.

Section 15 provides the owner of the off-highway vehicle must furnish to DHSMV notice of the transfer of any whole or partial interest in an off-highway vehicle registered or titled in this state or of the destruction or abandonment of such vehicle within 30 days. The certificate expires upon transfer, destruction, or abandonment, unless the transfer of a partial interest does not affect the owner's right to operate the vehicle.

The section further provides any holder of a certificate of registration must notify DHSMV or the county tax collector within 30 days after a change of address and must furnish DHSMV or the county tax collector with the new address. DHSMV may provide by rule for the surrender of the certificate bearing the former address and for its replacement with a new certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

Section 16 provides a duplicate off-highway-vehicle registration certificate or decal to replace a lost or misplaced certificate or decal may be obtained from the county tax collector for a \$10 fee. A duplicate certificate or decal may not be issued except by written request of the registered owner or a person authorized by the owner.

The section includes in the registration fee for off-highway vehicles a \$2.75 service fee to be retained by the county tax collector for each registration certificate or decal issued, replaced, or

renewed. The remainder of the fees collected by the county tax collector must be remitted to DHSMV.

The section further provides a mail service charge may be collected for each registration or re-registration mailed by DHSMV or any tax collector. All registrations and re-registrations must be mailed by first class mail. The amount of mail service charge must be the actual postage required rounded to the nearest 5 cents, plus a 25-cent handling charge. The mail service charge is in addition to the registration fee in section 14.

Section 17 provides DHSMV must deposit all funds received from this CS, less administrative costs of \$2 per title transaction, and \$2 per registration transaction, into the Incidental Trust Fund of the division of Forestry, Department of Agriculture and Consumer Services.

Section 18 provides if DHSMV finds an applicant for an off-highway-vehicle certificate of title or registration gave a false statement or false or incomplete information in applying for the certificate or otherwise failed to comply with the applicable provisions pertaining to the application for a certificate, it may refuse to issue or cancel the certificate.

The section further provides DHSMV may cancel any pending application or any certificate if it finds any title or registration fee or sales tax pertaining to such registration has not been paid, unless the fee or tax is paid within a reasonable time after DHSMV has given notice.

Violations and Penalties

Section 19 provides it is unlawful for any person to procure or attempt to procure a certificate of title or duplicate certificate of title to an off-highway vehicle, or to pass or attempt to pass a certificate of title or duplicate certificate of title to an off-highway vehicle, if such person knows or has reason to believe that the vehicle has been stolen. Any person who violates this provision is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years, a fine not exceeding \$5,000, or, if applicable, as a habitual felony offender.

The section provides it is unlawful for any person, knowingly and with intent to defraud, to have in his or her possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, duplicate certificate of title, registration, bill of sale, or other indicia of ownership of an off-highway vehicle or to conspire to do any of the foregoing. Any person who violates this provision is guilty of a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years, a fine not exceeding \$5,000, or, if applicable, as a habitual felony offender.

The section further provides any person who violates the following unlawful acts related to off-highway vehicle certificates of title is guilty of a felony of the third degree, and such person's off-highway vehicle is subject to seizure:

- To alter or forge any certificate, or retain or use such a certificate knowing it has been altered or forged.
- To use a false name, address, or make any false statement on any application or affidavit required by this act or otherwise commit a fraud on any application.

- To knowingly obtain goods, services, credit, or money by means of an invalid, duplicate, fictitious, forged, counterfeit, stolen, or unlawfully obtained certificate of title registration, bill of sale, or other indicia of ownership.
- To knowingly obtain goods, services, credit, or money by means of a certificate of title which is required by law to be surrendered to DHSMV.

The section further provides any person who violates the following unlawful acts related to off-highway vehicle registration decals is guilty of a felony of the third degree:

- To make, alter, counterfeit, reproduce, or forge any decal unless authorized by DHSMV or retain such a certificate knowing it has been altered or forged.
- To knowingly possess a forged, counterfeit, or imitation decal, or a reproduction of a decal unless authorized by DHSMV.
- To barter, trade, sell, supply, agree to supply, aid in supplying, or give away a decal unless authorized by DHSMV.

Section 20 provides any person who fails to comply with any provisions of this act, for which a greater penalty is not otherwise provided, is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500.

Section 21 amends s. 375.315, F.S., to clarify the Fish and Wildlife Conservation Commission may continue to collect a \$10 fee, and issue a registration certificate and decal for off-road vehicles operated upon public lands under their jurisdiction.

Section 22 appropriates \$156,660 and one position to the Department of Agriculture and Consumer Services from the designated off-highway vehicle funds in the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services, for fiscal year 2001-2002 to carry out the provisions of this act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This CS provides all off-highway-vehicles purchased by a resident of Florida after the effective date of this act or which are operated on public lands must be titled (\$29 fee) and registered (\$25 fee).

C. Government Sector Impact:

According to DHSMV, implementing the provisions of this CS will require 450 hours of contracted programming modifications to the FRVIS 2000 software system at a one-time cost of \$60,750. The DHSMV will also receive \$2 for each registration and title transaction, and \$4.75 for each title transaction handled directly by DHSMV. The DACS estimates 12,000 off-highway vehicles will be titled each year and 20,000 off-highway vehicles will be registered each year, generating \$64,000 for DHSMV.

DACS estimates This CS will generate approximately \$784,000 in Fiscal-Year 2001-2002, to be deposited into the Incidental Trust Fund of the Division of Forestry, Department of Agriculture and Consumer Services.

The county tax collectors will receive \$4.25 for the issuance, duplication, or transfer of any title, and a service charge of \$1.25 for each application, which is handled in connection with the recordation or notation of a lien on an off-highway vehicle, which is not in connection with the purchase of such vehicle. The CS further authorizes tax collectors to impose an additional service charge of 50 cents when a transaction occurs in a tax collector branch office. The CS further includes in the registration fee for off-highway vehicles a \$2.75 service fee to be retained by the county tax collector for each registration certificate or decal issued, replaced, or renewed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.