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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13

SPONSOR Martinez, R. LAST UPDATED _____ HB 399

SHORT TITLE Off-Highway Vehicle Routes SB _____

ANALYST Cerny

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total (DGF)	\$40.0	\$0.0	\$0.0	\$40.0	Nonrecurring	General Fund
Total (NMDOT)	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 201

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Game and Fish (DGF)
 Department of Public Safety (DPS)
 Department of Health (DOH)
 Taxation & Revenue Department (TRD)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

House Bill 399 (HB 399) proposes to amend NMSA 1978, Section 66-3-1011 of Off Highway Vehicle (OHV) Act to allow for the operation of Off-highway motor vehicles on designated routes established by counties or municipalities with populations under one hundred thousand where those routes are signed with warning signs for off-highway motor vehicles and the signage is upright or painted on the surface of the roadway.

HB 399 would also allow the Secretary of Transportation to designate off highway motor vehicle routes along state highways. These routes may be shared with other modes of transport.

FISCAL IMPLICATIONS

The Department of Game and Fish (DGF) will be required to train law enforcement officers statewide in this change to the OHV Act and the county or municipal changes as they are adopted. Additionally, all OHV educational materials developed in FY 2013 will need to be amended and reprinted with updated information. Estimated cost for retraining law enforcement officers and for reprinting educational materials is \$40,000.

The Department of Transportation (DOT) states that it is not clear what entity will incur the signage and painting costs that will assure all proper warning signs are in place along designated routes or who will maintain and pay to maintain such signage. Moreover, if the Secretary of Transportation elects to specify routes along state highways, the Secretary may choose to post signage and the DOT then would likely be responsible for manufacturing, posting and maintaining such signage. Costs are indeterminate at this time.

SIGNIFICANT ISSUES

The most significant issues with regard to HB 399 are: driver age and safety, equipment on OHV's, and liability and insurance.

The Off-Highway Motor Vehicle Act currently allows operators 10 years of age and older to operate an off-highway vehicle if supervised by a licensed driver over the age of 18. However, current graduated driver licensing laws do not allow for a permit or license for any applicant under the age of 15. 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.

HB 399 does not address unlicensed or underage drivers. The Taxation and Revenue Department (TRD) states: "As written, this bill would permit on-road operation of off-highway motor vehicles by unlicensed drivers, including children age 10 and even younger (if supervised by an adult per Section 66-3-1010.3), raising potentially significant traffic safety issues."

The U.S. Consumer Product Safety Commission (CPSC) discourages the use of ATVs and Side-by-Sides on paved surfaces due to low pressure tires and the absence of Department of Transportation Safety requirements, including the DOT-rated tires and safety restraint systems such as seatbelts and airbags. The CPSC requires all manufactures to equip Off-highway motor vehicles with a warning label discouraging on-pavement use.

The Department of Health (DOH) analysis states:

- "OHV safety, particularly ATV safety, is an important issue for both adults and children. In New Mexico, between 1982 and 2007, there were 86 reported ATV-related deaths. Of these deaths, 28 (32 percent) were children under the age of 16 years (U.S. Consumer Product Safety Commission (CPSC). National CPSC data show that children under 16 suffered 40,000 serious injuries in 2007, which accounted for 27 percent of all ATV-related injuries. And, since 2001, there has been a statistically significant increase (17 percent) in the number of children under 16 seriously injured (i.e., traumatic brain, spinal, abdominal, and complicated orthopedic injuries) on ATVs.

- In an attempt to make operation of ATVs safer for smaller children, ATVs are required to have a label from the manufacturer stating that the use of machines greater than 90cc by riders under the age of 12 is prohibited. Also, the U.S. Consumer Product Safety Commission approves of sub-50cc ATVs for use by children as young as age 6.
- HB 399 does not address whether off-road vehicles, whether in the category of recreational off-highway vehicles, utility terrain vehicles or side-by-sides, must be equipped with headlights, brake lights, horns and turn signal indicators in order to comply with minimal road use requirements. An all-terrain vehicle (ATV) is designed exclusively for off road use, with low pressure tires, a seat that is straddled by the operator, along with handlebars for steering control. 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: “OHVs 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.
- Some OHVs, specifically 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, thus making them dangerous on hard surfaces, when compared with softer surfaces. 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. Off Highway Vehicles (OHV) are not designed to operate on public thoroughfares, nor are their driving permits intended for that purpose.
- U.S. Consumer Product Safety Commission (CPSC) data 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. Riding on public roads increases the probability of the ATV colliding with cars or trucks.
- A recent meta-analysis of previous CPSC studies, as well as data specific to Iowa for 1985 to 2009, by the University of Iowa Department of Emergency Medicine indicated that 62 percent of U.S. ATV deaths resulted from roadway crashes, and roadway deaths since 1998 have increased at a greater rate than off-road deaths. The review also determined that fatal roadway crashes were more likely than off-road crashes to result in multiple deaths and to involve multiple riders, higher alcohol use, more collisions, and more head injuries. Similarly, non-fatal Iowa roadway crashes (2002-2009) involved more passengers, alcohol use, and collisions as compared to off-road crashes and helmet use was significantly lower in roadway crashes relative to off-road, resulting in more severe injuries overall, including head injuries. The principal conclusion of the study was that multiple risk factors exacerbate the inherent difficulty of safely operating ATVs on roads, and that speed and lack of protective equipment increase injury severity.”

The DOT states in their analysis that 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 Department of Public Safety (DPS) analysis states “No significant issues to DPS.”

ADMINISTRATIVE IMPLICATIONS

According to the DOT, oversight will need to be in place to determine which roads become designated routes as well as to determine what signage is necessary and for the placement of the warning signs for designated routes.

PERFORMANCE IMPLICATIONS

The DGF states that State law enforcement officers would need to become familiar with differing local ordinances in 33 counties across New Mexico to effectively enforce OHV rules that vary from one jurisdiction to another.

TECHNICAL ISSUES

HB 399 would allow municipalities or counties to enact ordinances that could be less restrictive than the existing state statute. As a consequence, an operator could be in compliance with a county or municipality ordinance that is less restrictive than state law(s), yet still be in violation of more restrictive state laws.

OTHER SUBSTANTIVE ISSUES

OHVs operating on roadways may be in conflict with other motor vehicle code requirements for operation on roadways. For example, HB 399 does not address whether liability insurance will be required.

Some outlying rural communities in the four most urban counties with populations exceeding 100,000 would not be allowed to utilize the amendment proposed in HB 399, despite their similarities to other rural communities that are covered by the bill.

AMENDMENTS

Section 66-3-1010 NMSA 1978 provides that drivers of off-highway motor vehicles are not required to be licensed. If HB 399 is enacted, this section could be amended to add an exception for the on-road operation permitted by the new Section 66-3-1011(C) proposed in the bill.

CAC/svb