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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/07

SPONSOR Hamilton LAST UPDATED _____ HB 177

SHORT TITLE Off-Highway Vehicle Insurance Requirements SB _____

ANALYST Earnest

REVENUE (dollars in thousands)

Estimated Revenue*			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
0	(\$38.0)	(\$40.0)	Recurring	State Road Fund
0	(\$13.0)	(\$10.0)	Recurring	Local Governments
0	(\$150.0)	(\$150.0)	Recurring	Trail Safety Fund

(Parenthesis () Indicate Revenue Decreases)

*The \$30 distribution to the Trail Safety Fund, set by the Tourism Department, resulted from legislation enacted in 2005 that became effective January 1, 2006. Hence the Taxation and Revenue Department has limited experience with regard to the revenue flows associated with the new law. Distributions to the Trail Safety Fund, however, are expected to total approximately \$460,000 in the 2006 calendar year. Approximately 15,000 off-road vehicles were registered in calendar year 2006. The fraction of this figure that constitutes renewals is uncertain. It is likely that registrations will diminish as the total population of off-road vehicles (variously estimated at 50,000 to 60,000) becomes registered. The Motor Vehicle Division reports that approximately 43,000 off-highway vehicles are currently registered. The estimate above assumes 10,000 renewal registrations occur annually on an ongoing basis, and hence will generate, under present law, \$300,000 in funds flowing to the Trail Safety Fund, and \$170,000 in funds to the state Road Fund and Local Governments. Hence, reducing the \$30 fees to \$15 will decrease revenues to the Trail Safety Fund by approximately \$150,000, and funds subject to “formulaic distribution” by approximately \$50,000 (\$5 x 10,000). It is likely, however, that the fee reductions will increase registrations, but no estimate of an increase is available. These estimates should therefore be considered *rough* approximations.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$50.0	\$50.0	\$100.0	Recurring	Trail Safety Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

NM Tourism Department (NMTD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 177 amends the Off- Highway Motor Vehicle Act (Section 66-3-1001 through 1016 NMSA 1978).

- 1) Off-highway motor vehicles would be exempted from the Mandatory Financial Responsibility Act (Section 66-5-201 through 239 NMSA 1978);
- 2) Off-highway vehicles that are registered in another state would be allowed to be operated in New Mexico without additional user fees;
- 3) Owners, operators, instructors, members of safety organizations and sponsors of off-highway sporting events would be indemnified from lawsuits; and
- 4) Technical changes are made to the statute, including the addition of a definition of “age-appropriate size-fit” applicable under current law to drivers of off-road vehicles under 10 years of age. Section 66-3-1010.3 currently prohibits use of off-highway vehicles unless the vehicles are “age- appropriate size-fit” – of a size allowing riders to safely operate the vehicles.

FISCAL IMPLICATIONS

The proposed measure would reduce renewal registration fees currently charged for off-road vehicles. Current statutes impose a \$17 registration fee -- \$5 of which is appropriated to MVD to defray registration costs, and \$12 is distributed by formula, with most of the money going to the State Road Fund. Current statute also imposes a maximum \$30 off-highway user fee that is used to improve trails on state lands that is deposited in the Trail Safety Fund and administered by the New Mexico Tourism Department. The fees must be renewed every two years. The proposed bill would decrease the \$17 registration fee to \$12 and the \$30 user fee to \$15 when registration is renewed. The \$5 distribution (of the \$12 renewal fee) to MVD would remain unchanged, while the remaining \$7 would, as under current law, be distributed through the formula described above. The \$15 user fee would continue to be distributed to the Tourism Department in the same manner that the \$30 fee it replaces.

Continuing Appropriations language

This bill does not amend the original statute containing continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

House Bill 177 makes significant changes to the 2005 OHV Act, including liability exemptions and protections for OHV safety training organizations, instructors, events and their owners and operators provided that there is a signed motor sport release form.

According to NMTD, the limits on liability for OHV training organizations, instructors, riders, operators and others purport to be modeled on the protections from liability established by the Equine Liability Act, NMSA 1978 sections 42-13-1 et. seq. However, that Act was intended to remove strict liability in tort from those involved with equine activities in recognition of the essential nature of horses. Equine activities might otherwise be considered ultra-hazardous activities justifying a strict liability standard for injuries.

The liability provisions of House Bill 177 are actually a broader waiver of liability. While the Equine Liability Act does not immunize one from liability for harm caused by his own negligence, gross negligence, recklessness or willful misconduct—thus maintaining traditional tort law liability—the provisions in House Bill 177 would exempt a broad class of individuals from liability for damages arising from an injury to or death of an operator or passenger of an off-highway motor vehicle directly or proximately caused only by gross negligence, recklessness or willful misconduct. That is, ordinary negligence would not be actionable. One concession is made by requiring the use of a new “motor sport liability release” (created by the bill) by a person who “owns, operates, promotes or sponsors an off-highway motor vehicle closed-course sports facility, recreation area, sports training facility, sports event or tour” in order to perfect protection from liability for ordinary negligence. Gross negligence and intentional injury remain actionable.

Page 9, lines 13-17 in House Bill 177 provides a blanket exemption from legal liability to OHV safety training organizations, their members, and instructors and guides approved and certified by the OHV Safety Board.

House Bill 177 also exempts vehicles and their owners from the Mandatory Financial Responsibility Act (page 16, line 8 through end; page 17, lines 1-9). Under this proposal, owners and operators of off-highway vehicles would no longer be required to carry liability insurance for off-highway vehicles.

House Bill 177 allows the Off-Highway Motor Vehicle Safety Board to collect fees for processing applications for safety training organizations, instructors and guides. Currently, the only funding source for the payment of administrative costs to process applications for board certification is the Trail Safety Fund which was established by the Act. Examples of administrative costs could include the processing of applications for completeness, evaluation of curricula, evaluation of requests for exemption from the Safety Standards and background checks (all required by NMAC 18.15.3). Permitting the board to set application fees is consistent with standard administrative practice and will preserve Trail Safety Fund revenues for their

intended purposes—the establishment of environmentally responsible sites for trails and their maintenance.

PERFORMANCE IMPLICATIONS

NMTD finds that by taking money from the Trail Safety Fund in order to pay for administrative costs associated with the application process, this bill would have an impact on the Tourism Department's ability to use the Trail Safety Fund to meet its performance measure of developing trails.

ADMINISTRATIVE IMPLICATIONS

According to NMTED, implementation of the Off-Highway Vehicle Safety Board's rule 18.15.3 is expected to be significant for the department if the Department of Transportation Traffic Safety Bureau does not assume administrative responsibility for the safety certification process. NMTD is not a regulatory or enforcement agency and has no safety certification capabilities of its own. If the department were to assume administrative responsibilities, it would require at least one (1) FTE to process and evaluate applications and ensure that training organizations are complying with the rule (NMAC 18.15.3). House Bill 177 may generate increased revenue to offset these new administrative costs but does not provide for increased budget or staff to meet these increased administrative duties.

There will be enforcement of the safety regulations that went into effect on January 1, 2007. This will have some impact on magistrate and municipal court case loads, since violations of the Act and its rules are petty misdemeanors.

TECHNICAL ISSUES

NMTD states that it is not a regulatory or enforcement agency and has no safety certification capabilities of its own. Asking NMTD to regulate the OHV training organizations changes the role of the department. The department is working with other agencies with regulatory authority and will ask them to assist in this process. If these agencies take on this responsibility then the department will have to compensate them for their time and efforts. The department would do this either through the existing trail fund or through the fees that are collected if this bill is passed.

TRD finds that the apparent intent of the proposal is to replace off-road vehicle licenses with stickers, as indicated in the definition section, pp 2-3. It is unclear how the proposed measure accomplishes this.