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## F I S C A L   I M P A C T   R E P O R T

SPONSOR Cook ORIGINAL DATE 02/21/11 LAST UPDATED   HB 445  
SHORT TITLE Off-highway Vehicles on Streets & Fees SB    
ANALYST Hoffmann

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB135, SB254 and SB457. Relates to HB435 and SB481.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	0	\$22.0	\$22.0	\$44.0	Recurring	Trail Safety Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Game and Fish (DGF)  
Department of Health (DOH)  
Department of Transportation (NMDOT)

### SUMMARY

#### Synopsis of Bill

House Bill 445 would authorize off-highway motor vehicles to be operated on the public streets, roads or highways of the State when the thoroughfare has been designated as open to such travel by the State or a political subdivision. The bill authorizes political subdivisions to establish off-highway vehicle routes by ordinance or resolution. The bill further authorizes off-highway vehicles to be on public roads when used for agricultural purposes, or during special events. Current law only allows off-highway vehicles to cross streets and highways.

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If a state or political subdivision has designated a road, street or highway open to off-highway vehicles, the vehicles must comply with traffic laws, have headlights and taillights if operated after dusk and before dawn, have liability insurance, and have a driver who is at least 16 years old. No driver under 18 can transport a passenger unless the off-highway vehicle is designed for a passenger and the driver is directly supervised by a licensed adult who maintains visual contact.

HB 445 proposes to establish a new Class 2 penalty assessment misdemeanor in the Off-Highway Motor Vehicle Act, providing a \$100 penalty for operating an off-highway vehicle on public streets, roads or highways except where specifically authorized. It would also prohibit a municipality or county from imposing a fee for off-highway vehicle use of public land or requiring off-highway vehicles to be licensed or registered in the political subdivision.

### **FISCAL IMPLICATIONS**

The DGF states there will be additional cost to the department for re-training of up to 5,000 law enforcement officers statewide. Additionally, all OHV educational materials developed in Fiscal Year 2011 will need to be amended and re-printed with updated information. Estimated cost for training of law enforcement is \$7,000, and for reprinting educational materials is \$15,000.00.

### **SIGNIFICANT ISSUES**

Concerns about the risks of injury and death were expressed by agencies. The NMDOT had the following comments.

The U.S. Consumer Product Safety Commission advises to never drive an all-terrain vehicle (ATV) on paved roads. 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 the NHTSA definition of a motor vehicle.

Motor vehicle crashes are the leading cause of death for teenagers. Recent New Mexico statistics reflect the following:

- 13% of all drivers in crashes were teenagers;
- Teenagers comprised only 5% of New Mexico drivers;
- In 2008, a teenager was killed in a traffic crash every 12 days, and one was injured every 200 minutes; and
- 24% of crashes involving teenage drivers occurred at night, compared to 21% of all crashes that occurred at night.

Both the All-Terrain Vehicle Safety Institute and the Recreational Off-Highway Vehicle Association provide safety rules for riders that include the following language:

- Never ride on paved roads except to cross safely and as permitted by law.
- ATVs and recreational off-highway vehicles are designed to be operated off-highway.

The DOH offered the following discussion.

HB445 would provide for operation of off-highway vehicles (OHVs) on paved streets and highways other than limited access highways, freeways, state game commission-owned, controlled, or administered land; and land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department pursuant to Chapter 16, Article 2 NMSA 1978.

In addition to allowing off highway vehicle use on some paved roads, HB445 allows for use of off-highway vehicles on paved roads during special events, on paved roads designated by local government for off-highway vehicle use, and for agricultural purposes. Temporary exceptions made by local governments for use of off-highway vehicles on paved roads at special events where other motor vehicles are not allowed, preventing comingling of different categories of vehicles, is already permissible under the law. Exceptions for the necessity of crossing paved roads to access trailheads or for agricultural use are also permissible under the existing law.

HB445 also establishes regulations for drivers that are a minimum of 16 years but under 18 years of age when transporting a passenger on paved roads, requires liability insurance for the vehicle, and requires headlights and taillights for night operation on paved roads.

OHVs include off-highway motorcycles and all terrain vehicles (ATVs). An ATV is a vehicle that travels on low pressure tires, with a seat that is straddled by the operator, along with handlebars for steering control, which is designed exclusively for off-road use. 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: “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.

U.S. Consumer Product Safety Commission (CPSC) statistics show that between 1997 and 2002, 40% 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 introduces the possibility of the ATV colliding with a car or truck. 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% of all ATV incidents) involved collisions and 35% of these involved collisions with motorized vehicles.

West Virginia passed an off- highway vehicle law in 2004 that included the allowance for the use of these specialty vehicles on paved roads without center stripes. After the law was enacted, ATV-related traffic fatalities increased from 0.72 per 100,000 in 2004 to 1.32 per 100,000 in 2006. Dr. J. HelmKamp, author of the study and former epidemiologist at the Injury Control Research Center at the University of West Virginia, was recently contacted by phone and stated that: “Four sequential studies in West Virginia demonstrated that from 30% to 47% of off highway vehicle crash fatalities sustained annually between 1985 and 2007 occurred on paved road”.

The DGF also comments the Consumer Product Safety Commission has discouraged the use of

ATVs on paved surfaces due to the low pressure tires and absence of Department of Transportation Safety requirements; safety restraints, turn signals, mirrors, and DOT rated tires.

## **ADMINISTRATIVE IMPLICATIONS**

The DGF suggests that law enforcement officers unfamiliar with local ordinances may stop Off-Highway Vehicles operating on pavement resulting in delays and frustration.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill conflicts with HB135, HB 435, SB254, SB457, and SB481.

SB 481 and HB435 are duplicate bills which propose to change the allocation of spending by the Trail Safety fund so that no more than 25% (down from no more than 50%) would be spent on training and law enforcement.

HB135 would allow an OHV that has been registered as a motor vehicle to be operated at a speed greater than 10 miles per hour on a paved street or highway in certain circumstances. The OHV would have to meet equipment requirements for highway use. If the OHV is registered and driven as a standard motor vehicle, the driver must also be licensed.

SB254 conflicts with this bill. SB254 would permit an OHV to be driven on any paved road or highway with a posted speed limit of up to 35 miles per hour.

SB457 also conflicts with this bill. SB457 would permit an OHV to operate on roads or highways if it meets statutory requirements for and has a registration as a motor vehicle.

## **TECHNICAL ISSUES**

The DGF identified the following technical issues.

The current definition of “off-highway motor vehicle means a vehicle designed by the manufacturer for operation exclusively off the highway or road (66-3-1001.1E NMSA 1978). This law does not recognize that definition.

Section 1.B.1 would allow other agencies and political subdivisions to be less restrictive than the state statute. The phrase “agencies” lacks definition and could result in conflicts if adopted.

Section 1.C.3 would require OHVs operating on pavement to have “illuminated headlights and taillights,” but Department of Transportation standards are much more specific and restrictive. Lights should be visible at 150 feet.