



Legislative Fiscal Bureau

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February 17, 2004

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 596 and Senate Bill 277: All-Terrain Vehicle Operation and Registration

Assembly Bill 596 and Senate Bill 277 would do the following: (a) increase fees charged for the registration of all-terrain vehicles (ATVs); (b) establish noise level requirements relating to their operation; (c) increase a number of ATV related appropriations in DNR; (d) make adjustments to penalty provisions for operating ATVs while intoxicated; (e) increase the number of gallons used in calculating the ATV gas tax payment from 25 to 52 gallons; (f) require safety training for public use by any person who was at least 12 years old and was born on or after January 1, 1988; and, (g) expand the areas where private use ATVs may be operated. Substitute amendments adopted by the standing committees in each house removed the last three provisions (items "(e)" through "(g)").

SB 277 was introduced on October 13, 2003, and referred to the Committee on Higher Education and Tourism. The Committee adopted Senate Substitute Amendment 1 to SB 277 on January 16, 2004, and recommended SB 277, as amended, for passage on a vote of five to zero. The bill was referred to the Joint Committee on Finance on January 22, 2004.

AB 596 was introduced on October 15, 2003, and referred to the Committee on Tourism. The Committee adopted Assembly Substitute Amendment 1 to AB 596 on February 10, 2004, on a vote of ten to zero, and then recommended the bill, as amended, for passage on a vote of nine to one. The bill was referred to the Joint Committee on Finance on February 11, 2004.

The bills, as amended, are identical and are subsequently referred to in the following summary as "the bill" or the "substitute amendment".

SUMMARY OF SUBSTITUTE AMENDMENT

Several changes were made to AB 596 and SB 277 through the adoption of the substitute amendment. Under the original legislation, provisions exempting ATV operators from having to comply with certain regulations on private land would have been broadened. Under current law, certain restrictions relating to supervision and the requirement to obtain ATV safety training do not apply to minors if they are operating the ATV on land that is exclusively under the control of the minor's immediate family. The bill would have expanded this provision to include any land that is not open to the public. The substitute amendment removes this provision, retaining current law.

Further, AB 596 and SB 277 as originally drafted, would have required that any person who was at least 12 years old and was born on or after January 1, 1988, to have a valid safety certificate issued by DNR, another state, or Canadian province to operate an ATV on public trails. The substitute amendment also removes this provision.

Finally, AB 596 and SB 277 would have increased the number of gallons used in calculating the ATV fuel tax transfer payment from 25 to 52 gallons. The substitute amendment removes this provision as well.

Under current law, an ATV may not be operated in the state unless it is registered with DNR, subject to certain exceptions. Under the bill, as amended, registration fees would be increased 150% effective upon enactment of the bill, as shown in Table 1. Fees under the bill would be equivalent to those currently charged for registering snowmobiles.

TABLE 1

ATV Registration Fees

	<u>Current Law</u>	<u>Bill</u>
Public Operation Permit	\$12	\$30
Private Operation Permit	6	15
Commercial ATV Registration	36	90
Additional Commercial Plates	12	30
Transfer of Registration	2	5
County or Municipal Registration	2	5
Duplicate Certificate of Registration/Decals	2	5

Public operation permits are valid for two years, while private operation permits (for ATVs operated on private property only) are valid until the ownership of the ATV is transferred. Commercial ATV registrations include up to three reflector plates (additional plates may be

purchased separately). Fees for ATV registrations have not been increased since the program was created as part of the 1985-87 biennial budget act.

In addition to increasing the fees charged to register ATVs, the bill would also create a non-resident trail pass. The fee for the pass would be set at \$18 (the same fee currently charged for a nonresident snowmobile trail pass). The pass would be valid for up to one year (expiring annually on June 30). Under the bill, any ATV being operated in a public ATV corridor must either be registered or display a non-resident trail pass (subject to certain exceptions, such as reciprocal tribal licensing agreements). DNR may appoint individuals to issue non-resident trail passes. Any agent who issues a non-resident trail pass would retain an issuing fee of 50¢ (remitting the remaining \$17.50 to DNR). Procedures for distributing the non-resident trail pass would be developed in administrative rule by the Department, as would the regulation of agents distributing the trail passes. The penalty for operating without a non-resident trail pass would be a forfeiture not to exceed \$1,000.

Expenditures would increase by \$2,392,000 and 5.0 SEG positions under the bill, as shown in Table 2.

TABLE 2

ATV Expenditures Affected by the Bill

	<u>Current Law Funding</u>		<u>Increase Under the Bill</u>		<u>Total</u>	
	<u>2003-04</u>	<u>2004-05</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2003-04</u>	<u>2004-05</u>
4.0 Conservation Wardens			\$0	\$556,000		
1.0 Safety Education Position			0	200,000		
Equipment			<u>100,000</u>	<u>100,000</u>		
State Enforcement and Education	\$395,700	\$395,700	\$100,000	\$856,000	\$495,700	\$1,251,700
County Trails	\$1,732,700	\$1,900,900	\$0	\$871,000	\$1,732,700	\$2,771,900
State Trails	60,000	60,000	0	165,000	60,000	225,000
Safety Grant Program	100,000	100,000	150,000	150,000	250,000	250,000
County Law Enforcement	100,000	130,000	0	70,000	100,000	200,000
Tourism Study	\$0	\$0	\$30,000	\$0	\$30,000	\$0

Part of the workload of conservation wardens is the enforcement of state ATV laws. During 2002-03, wardens recorded 7,630 hours on ATV-related law enforcement and safety activities and issued 1,477 citations for violations related to ATVs. Currently, \$395,700 (including \$45,800 annually approved by the Joint Committee on Finance at its February 4, 2004, s. 13.10 meeting) and 4.0 positions are provided for this purpose. Under the bill, an additional \$556,000 annually and 4.0 conservation warden positions would be provided, increasing enforcement for ATV-related activities by up to 8,320 hours annually. Funding would include approximately \$276,000 for salary, fringe benefits and standard supplies for the four wardens. The remaining \$280,000 annually

would support the purchase of 23 patrol ATVs, ATV trailers, helmets and other safety gear, radar equipment and other supplies. It appears most of these equipment purchases would be needed on a one-time basis (\$100,000 annually in ongoing equipment funding is described in a following paragraph). However, under the bill this amount would be continued in the DNR base funding level for the 2005-07 biennium. The Committee could consider providing up to \$280,000 in 2003-04 (rather than 2004-05) for the one-time equipment purchases, thereby eliminating this amount from the agencies 2004-05 base funding level. Additional equipment or supply needs could be considered in the 2005-07 budget, if necessary.

The Department's safety training program disseminates ATV safety information and administers a statewide program of safety courses conducted by local instructors who are trained, certified, and supervised by DNR conservation wardens. The course material presented covers general ATV laws and safety tips for the operation of all ATVs. The statutes require that youth between the ages of 12 and 16 take the course and obtain a certificate in order to operate an ATV without the supervision of an adult. The courses are open, however, to anyone wishing to enroll. In 2003, 4,640 people received certificates upon successfully completing one of the ATV safety courses offered throughout the state. Support for the safety course is received in the form of course registration payments (\$10 per student), and an allocation of 0.5 position as well as funding from the general ATV law enforcement supplies and service funding (described in the previous paragraph). Under the bill, an additional \$200,000 and 1.0 safety education warden would be provided beginning in 2004-05 for this purpose. Funding would include approximately \$72,000 for salary, fringe benefits and supplies for the safety specialist. On February 4, 2004, when considering DNR's request for emergency funding under s. 13.10 for general ATV enforcement and safety education activities, the Joint Committee on Finance provided \$45,800 SEG annually. Accordingly, the Committee could choose to delete \$45,800 SEG in 2004-05 from funding provided under the bill for similar purposes. The remaining \$82,000 annually would support the purchase of 15 smaller (90 cc) ATVs and trailers for safety instruction, public education efforts and education supplies.

In addition, \$100,000 would be provided annually beginning in 2003-04 to purchase and maintain sound testing equipment to determine whether ATVs comply with applicable noise limitations, and to purchase and replace ATVs and other equipment for patrol. Funding would support the purchase of approximately 25 noise testing sets and 10 ATVs annually.

Currently, towns, villages, cities, counties and federal agencies can receive grant funding from the ATV account for any of the following types of ATV projects: (a) land or easement acquisition; (b) ATV facilities (such as parking areas, riding areas and shelters); (c) development and maintenance of ATV trails; (d) purchase of liability insurance; and (e) signs briefly explaining the law related to intoxicated operation of ATVs. In addition to local aids, funding is also provided from the ATV account for the same acquisition, development and maintenance projects on state-owned ATV areas and trails. Under current law, \$60,000 is provided for state ATV trail maintenance and \$1.9 million is provided for county ATV trail maintenance in 2004-05. Under the bill, these amounts would be increased by \$165,000 and \$871,000, respectively, for total trail

maintenance and development funding of \$3.0 million beginning in 2004-05. The Department recently promulgated an administrative rule that increased its rate of reimbursement for summer trails from \$220 to \$450 per trail mile and from \$80 to \$100 for winter trail miles. As of calendar year 2003, the state supported over 1,400 summer trail miles (about 4,000 winter miles) managed by local units of government, and approximately 150 state trail miles. Funding of local ATV trail miles at the new reimbursement rate is expected to cost an additional \$400,000 annually. In addition, the increased funding would allow DNR and local clubs to fund new trail improvements and additional trail miles.

Further, funding for the ATV safety enhancement grant program (created under 2001 Act 16) would be increased by \$150,000 annually (to \$250,000) under the bill. Available funding is awarded in the form of a grant to a non-profit organization (currently the National Off-Highway Vehicle Insurance Services Group, Inc. or NOHVIS), to assist DNR in promoting the operation of ATVs in a safe and responsible manner, recruiting and training volunteer ATV safety instructors and "trail ambassadors", and improving relationships with groups that promote recreational ATV operation. Currently, the grant program is appropriated \$100,000 annually. Prior to 2003 Act 33, the program had been funded at \$250,000 annually (the Governor item-vetoed the appropriation to \$100,000 annually in the 2003-05 biennial budget act).

The bill would increase funding for reimbursement of local ATV enforcement efforts to \$200,000 beginning in 2004-05. The state reimburses counties for up to 100% of the costs of local ATV patrols, with available funds prorated if claims exceed appropriated levels. In state fiscal year 2003-04, eligible county claims totaled \$149,600. Payments were prorated at 67% to meet the \$100,000 SEG available for reimbursement.

In addition to expenditures within DNR, the bill would provide \$30,000 in 2003-04 to the Department of Tourism to conduct a study on the impact of ATV recreation opportunities on statewide tourism and economic development. Tourism is directed to distribute the results of the completed study to the appropriate standing committees of the Legislature no later than June 30, 2005.

The bill would also impose a noise limit on ATVs. Under the bill, no person could manufacture, sell, rent, or operate an ATV which emits noise in excess of 96 decibels on the A scale (a range of sound measurement). The manner of measurement would be set in administrative rule by DNR. Currently, ATVs are restricted from emitting unusual or excessive noise. However, this standard has been argued by some to be ambiguous for enforcement purposes. Department officials indicate that 96 decibels is an informal standard used by other states (including California, Minnesota, and Michigan) when setting noise limits for ATVs and motorcycles. The testing of noise levels could be conducted in the field using sound meters, tripods, and other equipment when wardens are called upon to respond to noise complaints, and would provide a measurable (and more consistent) standard when attempting to determine what constitutes excessive noise.

The bill would increase certain penalties relating to the operation of an ATV while intoxicated. Under current law, the forfeiture associated with an individuals' first conviction of operating a recreational vehicle while intoxicated is no less than \$150 and no more than \$300. Under the bill, the maximum fine for a second offense within five years would increase from \$1,000 to \$1,100 (the \$300 minimum fine and imprisonment from five days to six months would remain the same). Further, in instances where there was a passenger on the ATV under 16 years of age, applicable minimum and maximum forfeitures, fines, and terms of imprisonment for operating while intoxicated would be doubled under the bill.

For persons with two or more prior convictions in the last five years, the maximum and minimum fines would also be doubled (currently \$600 to \$2,000) if the individual had an alcohol concentration of 0.17 to 0.199 at the time of the offense. If the individual had an alcohol concentration of 0.20 to 0.249 at the time of the offense, the maximum and minimum fines would be tripled, and if the individual had an alcohol concentration of 0.25 or above at the time of the offense, the maximum and minimum fines would be quadrupled. Imprisonment terms of 30 days to one year would not be modified. Also, the increased fines would not apply if the individual were already subject to the penalty enhancer for operating while intoxicated with a passenger under the age of 16. The intoxicated operator provisions would apply to violations committed on the effective date of the bill, but would not preclude the counting of convictions that occurred before the effective date as prior convictions, for purposes of sentencing by the court. Both the penalty enhancer for operating an ATV while intoxicated with a passenger under the age of 16, and the enhancers for blood alcohol levels of 0.17 or above, are similar to current law provisions applying to operating a motor vehicle while intoxicated.

The provisions of the bill would take effect April 1, 2004, or on the day after publication, whichever was later, except that the funding for the study by Tourism and the registration fee increases would be effective on the day after publication of the act.

FISCAL IMPACT

The main sources of revenue to the ATV account are ATV registration fees and a transfer of ATV fuel tax revenue to the account. The motor fuel tax transfer is made annually from the transportation fund, and equals the number of registered ATVs as of the last day of February of the previous fiscal year multiplied by the amount of motor fuel tax assessed on 25 gallons of gasoline on that date. Other sources of revenue to the account include ATV safety certificate fees and 1% of the total sales tax revenue that DNR collects from people who have purchased ATVs and have not provided proof that a sales tax was paid (which is required before a vehicle can be registered). The current ATV account condition is shown in the following table. The expenditures shown in the table include an increase of \$45,800 in 2003-04 and 2004-05 approved by the Joint Committee on Finance at its February 4, 2004 meeting for supplies and service costs associated with general ATV enforcement and safety education activities.

TABLE 3**ATV Account Condition Statement (Current Law)**

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$2,236,300	\$389,500	\$321,100
Revenue			
ATV Registrations	1,234,700	1,482,400	1,577,200
Interest Income	24,000	12,000	12,600
Other	40,800	40,700	40,800
Motor Fuel Tax Transfer	<u>1,081,400</u>	<u>1,243,300</u>	<u>1,405,600</u>
Total Revenue	\$2,380,900	\$2,778,400	\$3,036,200
Total Available	\$4,617,200	\$3,167,900	\$3,357,300
Expenditures	\$2,908,000	\$2,823,900	\$3,017,000
Encumbrances and Reserves	\$1,319,700	\$22,900	\$32,800
Closing Balance	\$389,500	\$321,100	\$307,500

Under the bill, changes would be made to both revenues (through increased ATV registration and trail fees) and expenditures (through increased appropriations). If the bill were signed into law prior to April 1, 2004, and took effect on that date, the ATV account would be expected to experience some increase in revenues from the resulting fee increase in fiscal year 2003-04 (perhaps \$110,00). However, due to the timing of registration renewals, and potential delays in processing registrations identified by DNR, the bulk of the increase in revenues to the ATV account would be expected to be realized beginning in fiscal year 2004-05. Increased revenues to the ATV account as a result of the changes included in the bill could total approximately \$2.3 million, beginning in 2004-05. Increased revenue of almost \$2.1 million would be expected from the registration increase and \$210,00 from the sale of about 12,000 non-resident ATV trail passes estimated for 2004-05.

Expenditures would also be increased under the bill, totaling \$2,392,000 SEG for the biennium (\$280,000 in 2003-04 and \$2,112,000 in 2004-05). Therefore, enactment of the bill may lead to an anticipated balance of about \$300,000 in the ATV account on June 30, 2005. The estimated financial condition under the bill is shown in Table 4. However, if the bill does not become effective until after April 1, 2004, anticipated revenues (and the associated account balance) could decline accordingly.

TABLE 4**ATV Account Condition Statement (Bill Effective 4-1-04)**

	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>
Opening Balance	\$2,236,300	\$389,500	\$151,100
Revenue			
ATV Registrations	1,234,700	1,582,400	3,643,600
Non-resident Trail Sticker	0	10,000	209,100
Interest Income	24,000	12,000	12,600
Other	40,800	40,700	40,800
Motor Fuel Tax Transfer	<u>1,081,400</u>	<u>1,243,300</u>	<u>1,405,600</u>
Total Revenue	\$2,380,900	\$2,888,400	\$5,311,700
Total Available	\$4,617,200	\$3,277,900	\$5,462,800
Current Law Expenditures	2,908,000	2,823,900	3,017,000
Bill Increases	<u>0</u>	<u>280,000</u>	<u>2,112,000</u>
Total Expenditures	\$2,908,000	\$3,103,900	\$5,129,000
Encumbrances and Reserves	\$1,319,700	\$22,900	\$32,800
Closing Balance	\$389,500	\$151,100	\$301,000

It should be noted that the creation of a separate nonresident trail sticker might reduce ATV revenues somewhat from the ATV fuel tax transfer in future years. The motor fuel tax transfer is made annually from the transportation fund, and equals the number of registered ATVs as of the last day of February of the previous fiscal year multiplied by the amount of motor fuel tax assessed on 25 gallons of gasoline on that date. It may be expected that some nonresidents who had previously registered ATVs within the state to comply with current law regulations (for example, if the non-resident's home state did not have a registration system or its system were not recognized by Wisconsin), may elect to purchase the annual nonresident trail pass instead of maintaining a state registration. While the cost of the trail pass is slightly higher than maintaining an in-state two-year registration (\$6 over two years), the trail pass would offer the flexibility of annual purchase at readily available vendors rather than a biennial registration. Further, the additional revenue generated on an annual basis by an individual purchasing a trail pass rather than maintaining a two-year registration (\$3 per year) would not make up for the loss of revenue to the account from its exclusion from calculation in the fuel tax formula (\$7 per ATV annually). As the fuel tax calculation uses the number of registered vehicles from the previous year, any impact of this change will not be seen until fiscal year 2005-06. Department officials have estimated that as many as 7,500 ATV owners from out of state may elect to purchase nonresident trail pass stickers (rather

than renewing existing two-year registrations) when their registration comes up for renewal in 2004-05.

As noted earlier, on February 4, 2004, when considering DNR's request for emergency funding under s. 13.10 for general ATV enforcement and safety education activities, the Joint Committee on Finance provided \$45,800 SEG annually. Accordingly, the Committee could choose to delete \$45,800 SEG in 2004-05 from funding provided under the bill for similar purposes. Further, up to \$280,000 SEG in one-time costs could be moved from fiscal year 2004-05 under the bill, to 2003-04 in order to remove these costs from ongoing expenditure levels in future biennia. Or, if the funds were not transferred between the years, the bill could be amended to specify that \$280,000 SEG in 2004-05 would be excluded from the Department's base for 2005-07 budget purposes.

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