

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Eduardo Garcia, Chair

SB 249 (Allen) – As Amended June 26, 2017

SENATE VOTE: 22-16

SUBJECT: Off-highway motor vehicle recreation

SUMMARY: This bill extends the sunset on the off-highway vehicle program until January 1, 2023, and makes other changes to the Off-Highway Motor Vehicle Recreation Act of 2003 intended to align the Division of Off-Highway Motor Vehicle Recreation's (division) work with the California Department of Parks and Recreation's (DPR's) mission to protect resources and cultural sites. Specifically, **this bill:**

- 1) Adds "habitat and cultural resources" to the definition of conservation.
- 2) Adds a monitoring component to assess the adequacy of conservation and restoration actions, and defines adaptive management strategies, going forward.
- 3) Adds a provision that requires a report to the Legislature regarding the protocols developed for environmental protection and monitoring.
- 4) Deletes the provision that prohibits the DPR director from organizing the division and requires the deputy director to be a part of the DPR management. Provides that the division will be under the general direction of the director.
- 5) Adds protection of natural and cultural resources as specific duties of the Off-Highway Vehicle Commission (commission).
- 6) Requires annual reporting on the number and types of injuries and accidents and the number and types of citations and other enforcement actions at State Vehicular Recreation Areas (SVRAs), disaggregated by each unit.
- 7) Requires internet posting of the plans, reports, and studies developed by the commission, disaggregated by individual unit.
- 8) Adds the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife to the entities to develop soil conservation guidelines, and requires those standards to be updated every five years beginning after December 31, 2020.
- 9) Adds to the wildlife inventory an inventory of native plants, both of which shall be updated every five years.
- 10) Expands the monitoring programs to focus on soil erosion, wildlife, and natural and cultural resources.
- 11) Adds a provision requiring the division to develop protocols, through a public process, on soil conservation, wildlife protection, monitoring, and management that will be overseen by the director.

- 12) Amends the division's authority by prioritizing natural and cultural resources among the primary purposes of the division.
- 13) Proposes other technical changes.

EXISTING LAW:

- 1) Creates, through the Off-Highway Motor Vehicle Recreation Act of 2003 (Act), the Division of Off-Highway Motor Vehicle Recreation (division) within the Department of Parks and Recreation (DPR). The division plans and acquires lands in state vehicular recreation areas (SVRA) which are units within the state park system. The division also implements a grants program from revenues in the Off-Highway Vehicle Trust Fund (Fund) which by law assigns specified percentages of those revenues for various purposes related to off-highway vehicles. The Fund is also used to support the division and to conduct its other activities.
- 2) Creates, the Off-Highway Vehicle Commission (commission) consisting of nine members, five of whom are appointed by the Governor, and two each are appointed by the Speaker of the Assembly and the Senate Rules Committee. Commissioners are required to represent one or more of the following interests: off-highway vehicle (OHV) recreation interests, biological or soil science, groups or associations of predominantly rural landowners, law enforcement, environmental organizations, or non-motorized recreation interests.
- 3) Requires that the commission supplant the State Parks and Recreation Commission for purposes of administering the Act.
- 4) Requires the commission to meet four times annually, and to receive public comment on development projects, as well as review and comment to the DPR director on the proposed budget of expenditures from the Fund as well as other duties including the development of strategic plans.
- 5) Directs the director of DPR to organize and administer the DPR. Section 5090.30 of the Public Resources Code exempts the division from this statute.
- 6) Provides that the division is headed by a deputy director who by law has no responsibilities to the DPR other than management of the division.
- 7) Provides that the division is charged with planning responsibilities for SVRAs, but general plans (that are used by the DPR) are not required under certain circumstances.
- 8) Establishes a grants program for various purposes from no more than ½ of the revenues in the Off-Highway Vehicle Trust Fund, with specified percentages of these revenues available for various purposes including law enforcement and restoration. The remainder of the funds may be used for administration, acquisition, operations, and other activities of the division.
- 9) Declares public safety, the appropriate use of lands, and the conservation of lands as the highest priorities for management of SVRAs. The division is charged with the prompt repair of erosion sites and to anticipate future problems caused by erosion.

- 10) Identifies the soil conservation standards used by the division as those developed in 1991 by federal agencies which were to be updated in 2006 to “establish a generic and measurable soil conservation standard at least sufficient to allow restoration of off-highway motor vehicle areas and trails. The 1991 guidelines are grandfathered in until they are updated.
- 11) Requires the division to close until repaired those portions of SVRAs that are out of compliance with soil conservation standards and habitat protection standards. The division has the responsibility to inventory and monitor wildlife at SVRAs.
- 12) Prohibits the division from funding trail construction unless the trail is capable of complying with the conservation specifications in the soil and wildlife plans.
- 13) Emphasizes the importance of siting SVRAs at locations to “maximize the fullest public use of the outdoor recreational opportunities present.”
- 14) Provides that the program sunsets on January 1, 2018.

FISCAL EFFECT: Unknown

COMMENTS:

Author’s Statement:

California’s Off-Highway Motor Vehicle Recreation (OHMVR) Program seeks to ensure that residents can enjoy this form of outdoor recreation in a sustainable and safe manner. The most recent reauthorization, 10 years ago, sought to improve the program’s administration, environmental protection and law enforcement via grants to non-state facilities; however more needs to be done to improve conservation and restoration efforts and minimize conflicts that frequently arise in these areas.

For example, under the current program, there is no consistent direction or process for resolving recurring resource degradation which leads to repeat restoration projects. Also, since the division operates largely independent of the Department of Parks and Recreation (DPR), natural and cultural resources in OHMVR areas are not protected with the oversight of the department.

In addition to extending the sunset, SB 249 strengthens environmental protection measures and better integrates the program with the DPR by clearly delineating resource protection and conservation requirements, including requiring standard monitoring and adaptive management practices, and establishing a standard process for avoiding and addressing resources degradation.

Background: *Purpose of the Bill.* Without legislation, the OHMVR Program sunsets at the end of 2017. In 1971, the OHMVR Program was established to manage off-highway vehicle recreation in a manner that ensures the public has access to this form of recreation while also protecting California’s natural and cultural resources. The program is administered by the OHMVR Division (division) within the DPR. The division manages 9 State Vehicle Recreation Areas (SVRAs) and provides state funding support for non-state off-highway vehicle (OHV) facilities through a grants program. The division is aided in implementing the program by a nine

member Off-Highway Motor Vehicle Recreation Commission, which is appointed jointly by the Governor, the Senate and the Assembly.

The program is funded by fees collected from users of SVRAs, vehicle registration fees, and fuel taxes associated with off-highway motor vehicle recreation. These funds are deposited into the Off-Highway Vehicle Trust Fund. Upon appropriation by the Legislature, up to 50% of the fund may be used for a grants program and the remaining is generally available to the division for implementing the program and managing SVRAs.

The division is required to establish soil conservation standards, make an inventory of wildlife populations and their habitats, and prepare a wildlife protection program for each SVRA. There currently is no requirement to do an inventory at newer or expanded SVRAs, nor is there a requirement to periodically update a wildlife protection program.

Stakeholder Process and Movement Toward Consensus. The author has engaged in a stakeholder meeting process since the introduction of the bill. The support and opposition have met at least four times, and the author has made several changes to the bill based on the opposition's requests. These include:

- 1) Removing the limitation that the OHV Commission have only two members representing specific stakeholders.
- 2) Retaining the mandatory number of OHV Commission meetings.
- 3) Deleting the creation of a new Science Review Team and, rather, direct the OHV division to review and incorporate best science into its management program.
- 4) Removing the proposed prohibition on the expansion of new OHV areas before best science can be gathered and included into the OHV program.
- 5) Deleting several references to provisions that apply not only to OHV parks but to all state, local, and federal lands.
- 6) Deleting a requirement that OHV areas comply with local ordinances, and rather makes this permissive, aligning these with other state laws.

Fundamental Issues Outstanding. There remain fundamental, outstanding issues that are still under discussion. Should this bill continue, these issues must be addressed prior to final passage of the bill, and should be returned to the respective policy committees for review. These include:

- 1) With regard to the authority of the DPR director in relation to the division—shall the division be incorporated more completely into the DPR or remain more separate?
- 2) If adaptive management is used as a tool to manage SVRAs, how should this be defined?
- 3) Shall the division allow grandfathering of illegal trails? If so, how should these be defined in expansion areas?
- 4) Shall the division be required to collect and post statistics such as accidents, injuries, citations, and law enforcement actions?

- 5) How should the division maintain records on soil conservation and wildlife protections?
- 6) What type of ongoing natural features monitoring program should the division maintain? Should this be in line with the requirements of other state agencies and/or generally the DPR?
- 7) Should there be a sunset on the division or should it be granted the same status as other state divisions, such as the Division of Boating and Waterways?

A number of these outstanding, and unresolved, issues are discussed below and some are addressed in committee amendments.

Cultural and Historic Resources. The provision regarding protection of cultural and natural resources in OHV riding areas has been raised a number of times in stakeholder discussions. Opponents are concerned that this provision means that they would be required to return certain riding areas to a semi-natural state, as if it were only used for hiking or non-invasive activities, and that prioritizing this as a primary purpose of the program would reduce or eliminate the ability to use SVRAs in a reasonable way. As written, this provision is to maintain cultural and historic resources in perpetuity, for the users of the parks (in this case, SVRA users). In many state parks, by necessity and convenience, there are areas that are maintained as “not natural” – such as campgrounds, roads, trails, firebreaks, horse trails, and staging areas, among others. Because the purpose of the division and the program is to promote off-road motorized sports, this provision must inherently recognize the practical purpose of the program—and therefore allow motorized and off-road usage. However, without these provisions, certain areas of the SVRAs might not receive the same attention as without the language. For example, within the expansion of Carnegie SVRA are a set of historic mining operations including buildings, cultural resources, and historic sites. While some will see this provision as protecting these important sites for the use of those attending the park, meaning OHV riders or other park visitors, others will likely see this as a significant limitation on use.

Each SVRA is unique—and many are revered for their steep hills (Carnegie), varied terrain (Prairie City), expansiveness (Ocotillo Wells), and preserved trails (Hollister Hills). This provision seems to reinforce the significance and uniqueness of each of these areas, while respecting the natural, cultural and historic properties contained within them. As with other state parks, the concept that SVRAs include cultural and historic sites, to be reached by traveling within the state park, may be considered by some well within the mission of the program and park.

New Monitoring and Management Programs Proposed. This bill adds a new monitoring program requirement to the division that is extensive and, at its base, includes:

- 1) Periodic evaluations of monitoring results to assess the adequacy of conservation and restoration actions to inform adaptive management strategies, as defined.
- 2) Surveys to determine the status of natural and cultural resources.
- 3) Periodic assessments of the effectiveness of protection and restoration measures currently in place.

- 4) Progress reports on the implementation of conservation and restoration measures, the designation and management of sensitive areas with cultural and natural resources, and alternative management strategies.

These issues, as of this version of the bill, are not resolved. Questions remain regarding the extensiveness of the provisions, how they relate to other monitoring programs in other state agencies (including the DPR overall), and how they can be effectively implemented without impeding the primary purpose of the division—the development of specific areas for off-highway vehicle use. The implementation time of the monitoring program has also been questioned extensively—with a requirement that the program be developed and a public process be in place by January 1, 2019, and certification of the program by the DPR director by January 1, 2020.

Continued Sunset. This bill includes a five-year sunset on the program on January 1, 2023. As discussed above, this would be (should the bill pass), a short time after the new provisions of the monitoring program go into place. In practice, sunsets allow the Legislature a clear path to review a program's efficacy and necessity. In the case of the division, this has, in the past, allowed lengthy, and often challenging, discussions to take place about how the division should manage lands, maintain grants, and relate to the greater DPR. The most recent discussion, ten years ago, laid out several changes to the division's environmental activities as well as diversified the makeup of the commission itself.

At this time, the Legislature is faced with a question of whether the division needs continued sunsets, or whether removing the sunset would allow the division to move forward with continued legislative oversight in the budget and policy committees similar to the DPR overall. The sunset date would seem to trigger bilateral stakeholder discussions. However, in the case of the bills before the Legislature, these discussions did not start with enough lead time to get consensus on any program changes. The sunset date may also be seen as an impediment to interim, and iterative changes to the program—in effect “saving up” for a longer and more robust stakeholder discussion rather than addressing minor issues along the way. The Legislature may wish to consider either extending the program for a longer period of time (ten to fifteen years), with a specific stakeholder process built into the sunset, or removing the sunset altogether. The removal of the sunset altogether should not be seen as a removal of legislative oversight, for that is the prerogative of the Legislature at all times through its various committee processes.

Makeup of the Commission. The previous version of this bill sought to change the makeup of the commission itself by suggesting changes to how many individuals would represent each stakeholder group. These changes were removed in subsequent versions of the bill. Absent from this discussion is the notion that a new generation of riders is growing into the system—riders that may have different views from the previous generation. The youth voice and voices from disadvantaged communities are absent, formally, from the commission membership. The Legislature may wish to consider how to incorporate these viewpoints into the commission itself, to ensure a more robust and diverse commission moving forward.

Lawsuits Related to the OHV Division. The division has several pending lawsuits, including four over its approval of the expansion of Carnegie SVRA in Alameda County. Separately, ongoing litigation related to fugitive dust downwind of the Oceano Dunes SVRA has occurred between the DPR, the local air pollution control district, and the state. In the case of Oceano Dunes, on June 12 of this year, the San Luis Obispo Air Pollution Control Office sent a letter to

the DPR warning of violations of Rule 1001, which specifically relates to fugitive dust emission standards, limitations, and prohibitions. On June 21, the Air Pollution Control Board voted to affirm continued support of the efforts by their Air Pollution Control Office to reduce air pollution from particulates related to Rule 1001. These actions follow numerous attempts by locals to engage the division and the DPR to reduce fugitive emissions and their inherent health impacts, from the SVRA.

Prior and Related Legislation:

SB 159 (Allen), of this session. SB 159 (Allen), amended in the Senate on June 15th, is focused only on the “green sticker” provisions which are two fees paid by OHV owners when they register their vehicles.

AB 1077 (O'Donnell), of this session, held in Assembly Appropriations Committee. This bill would have eliminated the sunset altogether and to extend indefinitely the service fees that are transferred to the Fund under the control of the division. AB 1077 (O'Donnell) does not propose any programmatic or policy changes.

Supporting Arguments. According to the author, the OHV program seeks to ensure residents can enjoy this form of outdoor recreation in a sustainable and safe manner. The most recent reauthorization, 10 years ago, sought to improve the program's administration, environmental protection and law enforcement via grants to non-state facilities; however, supporters argue more needs to be done to improve conservation and restoration efforts and minimize conflicts that frequently arise in these areas.

An environmental coalition whose members are listed below is in support of the bill. The coalition views the impacts of off-highway vehicles as continuous and ongoing. They are frustrated with the lack of progress in trying to work with the division to address these issues and have turned to litigation to attempt to redress issues in coastal, desert, and inland areas that have been unacceptably affected by OHV operations.

The coalition observes that many of the proposed changes in this bill were identified in, or are consistent with, the general reforms for DPR contained in the Parks Forward Commission's final report that recommended improved integration of the division into the DPR, funding for transportation across the entire parks system, and subsidized transportation grants to provide access to parks and other spaces to disadvantaged communities.

Finally, specific environmental justice concerns have been raised regarding the health hazards and lawsuit that is currently underway in San Luis Obispo County. A letter with comments from 664 supporters of SB 249 comment on health impacts related to the Oceano Dunes SVRA. These proponents would argue that health impacts of SVRAs are not clearly defined in statute and that this should be included in the legislation.

Opposing Arguments: According to the opposition, an overarching concern is the suggestion from proponents that the OHV recreational program should be held to the same environmental standards as all of the state's system of 280 parks. They argue that the nature of this bill is to, through various re-definitions and a monitoring program that is more onerous than other state agencies, eliminate or remove the ability of OHV users to recreate within the state. Other concerns include:

- 1) The California program is a national model that provides a statewide system of managed OHV recreational opportunities, together with a grants program, and a series of SVRAs.
- 2) The program provides for trail maintenance, education, conservation, and enforcement that balances recreation with cultural and natural resource protection.
- 3) The program is completely self-funded.
- 4) The provision in the bill to have soil standards updated every 5 years constitutes “mission creep” and is burdensome.
- 5) Current law encourages implementation of best management practices and the program is complying with that direction as contained in the law.
- 6) Many of the proposed changes are punitive and detrimental to the future of the program.
- 7) Some oppose the integration of the division into the DPR
- 8) There is concern about adding protections for cultural resources, and strengthening the wildlife protections.
- 9) Some opponents read section 13 as removing “the essence” of the OHV program by deleting the provision that the SVRAs “make the fullest public use of the outdoor recreational opportunities present.”

Committee Amendments: This bill is subject to continued discussion with stakeholders and will likely be amended in the near future as the DPR weighs in on the efficacy, in particular, of the extensive monitoring program and protocols it seeks to establish. The DPR is currently engaging with the author, and these discussions are likely to continue through the next several weeks. At this time, this committee and the author may consider the following amendments:

Page 6, Line 15:

(h) Prepare and submit a program report to the Governor and the appropriate policy and fiscal committees of each house of the Legislature on or before January 1, 2022 2024.

Page 7, Line 36:

(g) Prepare, implement, and periodically update plans for lands in, or proposed to be included in, state vehicular recreation areas, including new state vehicular recreation areas. However, a plan need not be prepared or updated in any instance specified in subdivision (c) of Section 5002.2. For purposes of subdivision (c) of Section 5002.2 and this subdivision, unauthorized or otherwise unintended off-highway trails that were not created for the purpose of emergency repair or restoration work authorized by the division, or *division or that were developed as part of the previous business operations of a property before it was acquired, and unauthorized or otherwise unintended off-highway expansion areas* shall not be considered an existing facility or use.

Page 8, Line 35:

5090.34. (a) In cooperation with the commission, the division shall make available on the division's Internet Web site information regarding off-highway motor vehicle recreation opportunities, pertinent laws and regulations, and responsible use of the system. ~~At a minimum,~~ *Where practical,* the Internet Web site shall include the following:

Page 9, Line 19:

5090.35. (a) The protection of public safety, the appropriate utilization of lands, and the conservation of ~~natural and cultural~~ resources are of the highest priority in the management of the state vehicular recreation areas and ~~other areas in the system~~ *when providing grant funding to agencies responsible for portions of the system,* as defined in Section 5090.09.

Page 9, Line 38:

(b)(1) The division, in consultation with the United States Natural Resource Conservation Service, the United States Geological Survey, the United States Forest Service, the United States Bureau of Land Management, ~~the United States Fish and Wildlife Service,~~ the California Department of Fish and Wildlife, and the California Department of Conservation shall update the 2008 Soil Conservation Standard and Guidelines to establish a generic and measurable soil conservation standard by December 31, 2020, and shall review and, as appropriate, update the standard at least every five years thereafter.

Page 12, Line 11:

(d) The director shall ensure that Section 5090.35 is implemented consistent with ~~the practices and protocols~~ *this chapter.*

Page 12, Line 26:

(c) All unavoidable impacts to natural or cultural resources in new, expanded, and existing state vehicular recreation areas shall be ~~fully~~ mitigated by implementing appropriate mitigation measures, including permanently protecting lands that provide comparable natural and cultural resources and values. State vehicular recreation areas shall *fully* incorporate all mitigation and permit ~~recommendations or~~ requirements of the Department of Fish and Wildlife, the United States Fish and Wildlife Service, and all other responsible or trustee agencies.

Page 14, Line 23:

Repeal the sunset.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda Creek Alliance
Alliance for Responsible Recreation
Audubon California
California Environmental Justice Alliance
California League of Conservation Voters
California Native Plant Society

California Oaks
 California Releaf
 California Wilderness Coalition
 California Wildlife Foundation
 Center for Biological Diversity
 Center for Sierra Nevada Conservation
 Central Coast Alliance United for a Sustainable Economy
 Citizens to Complete the Refuge
 Community Off-Road Vehicle Watch
 Defenders of Wildlife
 East Bay Regional Park District
 Friends of Tesla Park
 Friends of the Arroyos
 Morongo Basin Conservation Association
 Mt. Diablo Audubon Society
 Natural Resources Defense Counsel
 Nature Conservancy, The
 Nototomne Cultural Preservation – Northern Valley Yokut/Ohlone/Bay Miwuk
 Ohlone Audubon Society
 Regional Parks Association
 Santa Clara Valley Audubon Society
 Save Mount Diablo
 SAVE THE FROGS!
 Sierra Club California
 Society of American Indians
 SPRAWLDEF
 Tesla Road Residents’ Alliance
 Tri-Valley Trailblazers
 Wilderness Society, The
 Individuals (644)

Opposition

ABATE of California
 BlueRibbon Coalition/Sharetrails.org
 California 4 Wheel Drive Association
 California City Police Department
 California Motorcycle Dealers Association
 California Sportsman’s Lobby
 Creeps ‘N’ Jeeps
 District 36 Motorcycle Sports Committee
 Outdoor Sportsmen’s Coalition of California
 Rural County Representatives
 Safari Club International
 Safari Club International Foundation
 San Diego Off-Road Coalition

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