STATE OF NEW YORK

3182

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

Introduced by M. of A. BRINDISI, BLANKENBUSH, McDONALD, WOERNER -- Multi-Sponsored by -- M. of A. BARCLAY, MAGEE -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

AN ACT to amend the parks, recreation and historic preservation law, the vehicle and traffic law and the state finance law, in relation to the creation of an ATV trail fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent and purpose. In order to best organize and sustain an environmentally sensitive statewide system of trails for all terrain vehicles, the legislature hereby creates an ATV trail fund. The control and supervision of the trail fund shall be maintained by the office of parks, recreation and historic preservation upon consultation with the department of environmental conservation. The trail fund is created for the purpose of designating state, municipal and private lands as part of a statewide network of ATV trails. Fees obtained by the office of parks, recreation and historic preservation for the maintenance of the trail fund shall be divided between administration, enforcement, education and remediation and maintenance, construction and development of the statewide trail system. It is the purpose of this act to promote the safe and proper use of all terrain vehicles for recreation and commerce in this state by encouraging their use and development, while minimizing detrimental effects of such use upon the environment.

§ 2. The parks, recreation and historic preservation law is amended by adding a new article 26 to read as follows:

ARTICLE 26

ALL-TERRAIN VEHICLE TRAIL FUND

Section 26.01 Trail plan.

26.03 Rules and regulations.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 26.01 Trail plan. The department shall prepare a statewide all-terrain vehicle trail plan providing for recreational use of "all terrain vehicles" or "ATVs" on permitted state and municipal lands and ATV designated trails on private lands to establish a statewide network of ATV trails. For purposes of this article, "ATV" means an all terrain vehicle as defined in section twenty-two hundred eighty-one of the vehicle and traffic law.

§ 26.03 Rules and regulations. 1. The department shall promulgate regulations for the use of ATVs with a view towards achieving maximum use of ATVs and minimizing the detrimental effect thereof upon the environment. Nothing in this section shall prohibit the department from authorizing other ATV use on state owned lands. The commissioner shall adopt rules and regulations relating to and including, but not limited to the following:

a. Use of ATVs insofar as fish and wildlife resources and natural resources of the state.

b. Use of ATVs on public lands under the jurisdiction of the department, providing for incorporating recreational and sportsman use into UMPs developed for such lands.

c. Uniform signs or markers.

d. Requirements for protection of private property or therein occasioned by the use of ATVs.

e. Establishment of a comprehensive ATV information and safety education and training program, including provision for the issuance of ATV operation and safety certificates for operation of ATVs by youthful operators and adult operators without a valid driver's license.

f. Requirements that new connector trails must comply with state laws and regulations and, where applicable for state-owned lands, comply with a unit management plan and be subject to full public review and hearings.

g. Requirements for municipalities for the designation of ATV use on other public lands must be consistent with environmental impact assessments as prescribed by 6 NYCRR Part 617, and paragraph b of subdivision one and paragraph m of subdivision two of section 3-0301 and section 8-0113 of the environmental conservation law.

h. Provisions for current trails and trails pending approval on or before the effective date of this article are preserved in perpetuity and nothing shall restrict the use of commissioner policy three (CP3) permits issued by the department of environmental conservation on these trails.

i. Provisions prohibiting the use of ATVs on state owned lands classified as the following: Albany Pine Bush, Long Island Pine Barrens, or land or water classified as primitive or canoe pursuant to the master plan for management of state land.

2. Operation by youthful operators shall be as follows:

a. Persons between ten and fourteen years old must hold a valid safety certificate and be accompanied by an adult.

b. Persons between fifteen and eighteen years old must hold a valid safety certificate or driver's license.

§ 3. Subdivision 1 of section 2282 of the vehicle and traffic law, as amended by chapter 402 of the law of 1986, is amended to read as follows:

1. Except as hereinafter provided, no person shall operate any ATV within the state on lands other than those privately owned by the ATV owner unless such ATV has been registered and numbered in accordance with the provisions of this article, and the registration number for

such ATV is in full force and effect and displayed as provided under this article and regulations promulgated thereunder.

§ 4. Paragraph (g) of subdivision 4 of section 2282 of the vehicle and traffic law, as amended by chapter 402 of the laws of 1986, is amended and a new paragraph (h) is added to read as follows:

(g) Annual fees shall not be prorated and such fees shall be applicable to a year or any portion of a year. [~~Notwithstanding any inconsistent provision of this section, the difference collected between the fees set forth in paragraphs (a) and (b) of this subdivision in effect on and after September first, two thousand nine and the fees set forth in such paragraphs in effect prior to such date shall be deposited to the credit of the dedicated highway and bridge trust fund.~~]

(h) Fees collected pursuant to this section shall be deposited into the ATV trail fund established pursuant to section ninety-nine-z of the state finance law, and used only for those purposes enumerated in such section.

§ 5. Subdivision 12 of section 2282 of the vehicle and traffic law, as added by chapter 671 of the laws of 1985, is amended to read as follows:

12. Out of state ATV registration. **(a)** The registration provisions of this article shall not apply to non-resident owners who have registered their ATVs in compliance with the registration and licensing laws of the state, province, district or country of residence, provided that the ATV is appropriately identified in accordance with the laws of the state of residence. The provisions of this subdivision shall not apply to a resident of another state, province, district or country which does not have an ATV registration and identification law. Nothing in this subdivision shall be construed to authorize the operation of any ATV contrary to the provisions of this article.

(b) Non-resident owners who have registered their ATVs in compliance with the registration and licensing laws of a jurisdiction out of the state, or who reside in a jurisdiction which does not have an ATV registration and identification law, shall pay an annual fee, equal to that provided for pursuant to paragraph (b) of subdivision four of this section to lawfully operate such ATV in the state on lands other than those privately owned by the ATV owner.

§ 6. Section 2404 of the vehicle and traffic law, as added by chapter 402 of the laws of 1986, paragraph (e) of subdivision 1 and subdivision 3 as amended by chapter 554 of the laws of 2005, is amended to read as follows:

§ 2404. Operating rules. 1. No person shall operate an ATV:

(a) at a rate of speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing **or faster than fifty-five miles per hour**;

(b) in a careless, reckless or negligent manner so as to unreasonably endanger the person or property of another or cause injury or damage thereto;

(c) on the tracks or right-of-way of an operating railroad;

(d) in any tree nursery or planting in a manner that damages or destroys growing stock, or creates a substantial risk thereto;

(e) while pulling a person on skis or drawing or towing a sleigh, sled, toboggan, inflatable device or trailer which carries or transports any person unless attached by a rigid support, connection or towbar;

(f) on the frozen surface of public waters: within one hundred feet of any person other than a person riding on an ATV except at the minimum speed required to maintain forward movement of the ATV, nor within one hundred feet of a fishing shanty or shelter except at the minimum speed

required to maintain forward movement of the ATV nor on an area which has been cleared of snow for skating purposes unless the area is necessary for access to the public water;

(g) within one hundred feet of a dwelling between midnight and six a.m., at a speed greater than minimum required to maintain forward movement of the ATV;

(h) on public lands, other than highways, or on private property of another while in an intoxicated condition or under the influence of narcotics or drugs**;**

(i) on private lands unless expressly permitted; or

(j) while failing or refusing to comply with law enforcement.

2. The operator of an ATV shall:

(a) stop and yield to an authorized ambulance, civil defense, or police ATV or police vehicle being operated as an emergency vehicle and approaching from any direction;

(b) comply with any lawful order or direction of any police officer or other person duly empowered to enforce the laws relating to ATVs**;**

(c) keep the ATV lights on between sunset and sunrise;

(d) wear a helmet;

(e) comply with the rules of the road including but not limited to adherence to signage, posted speed limits, traveling on the right edge of the paved/road surface and riding single file.

3. [~~No person shall ride on or in a sleigh, sled, toboggan, inflatable device or trailer which is being towed or trailed by an ATV unless attached by a rigid support, connection or towbar.~~

~~4. A person operating an ATV shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on an ATV unless such ATV is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the ATV at the rear or side of the operator.~~

~~5.~~] For the purposes of title seven of this chapter, an ATV shall be a motor vehicle and the provisions of such title shall be applicable to ATVs.

[~~6.~~] **4.** Local laws and ordinances. Nothing contained in this article shall be deemed to limit the authority of a county, city, town or village from adopting or amending a local law or ordinance which imposes stricter restrictions and conditions on the operation of ATVs than are provided or authorized by this section so long as such local law or ordinance is consistent with its authority to protect the order, conduct, health, safety and general welfare of persons or property.

§ 7. Section 2411 of the vehicle and traffic law, as added by chapter 402 of the laws of 1986, is amended to read as follows:

§ 2411. **1.** Liability for negligence. Negligence in the use [~~of~~] **or** operation of an ATV shall be attributable to the owner. Every owner of an ATV **used or operated in this state on lands other than those privately owned by the ATV owner must be insured. Owners of ATVs** used or operated in this state shall be liable and responsible for death or injury to [~~person~~] **persons** or damage to property resulting from negligence in the use or operation of such ATV [~~by any person using or operating the same with the permission, express or implied, of such owner, provided, however, that such operator's negligence shall not be attributed to the owner as to any claim or cause of action accruing to the operator or his legal representative for such injuries or death~~].

2. Duties of ATV owners and operators. It is recognized that driving an ATV is a voluntary activity that may be hazardous. It shall be the duty of ATV owners and operators:

(a) To keep their ATVs in proper working order.

(b) To follow any and all other rules of conduct as are prescribed pursuant to section 26.03 of the parks, recreation and historic preservation law.

(c) Not to operate an ATV in any area not designated for driving ATVs.

(d) Not to operate an ATV beyond the conditions that limit speed.

(e) To familiarize themselves with rules of the trail.

(f) Not to leave the scene of any accident resulting in personal injury or damage to the property beyond the trail.

§ 8. The state finance law is amended by adding a new section 99-z to read as follows:

§ 99-z. ATV trail fund. 1. There is hereby established in the joint custody of the commissioner of parks, recreation and historic preservation and the comptroller a fund to be known as the "ATV trail fund".

2. The ATV trail fund shall consist of moneys appropriated thereto, and funds transferred from any other fund or source including the payment of fees pursuant to section twenty-two hundred eighty-two of the vehicle and traffic law.

3. Ten percent of all moneys in the ATV trail fund shall be available for the administrative costs of administering such fund. Forty-five percent of all moneys in the ATV trail fund shall be made available for the maintenance, construction and development of the statewide trail system. Forty-five percent of all moneys in the ATV trail fund shall be made available for enforcing and educating the public about the provisions of article twenty-six of the parks, recreation and historic preservation law.

4. Moneys shall be payable from the fund on the audit and warrant of the state comptroller on vouchers approved and certified by the commissioner of parks, recreation and historic preservation.

§ 9. Paragraph (a) of subdivision 1 of section 2281 of the vehicle and traffic law, as amended by chapter 319 of the laws of 1997, is amended to read as follows:

(a) "All terrain vehicle" or "ATV" means any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways providing that such vehicle does not exceed seventy inches in width, or one thousand eight hundred pounds dry weight. Provided, however, this definition shall not include a "snowmobile" or other self-propelled vehicles manufactured for off-highway use exclusively designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats which utilize an endless belt tread.

§ 10. The vehicle and traffic law is amended by adding a new section 2414 to read as follows:

§ 2414. Trespass violation fine. Operators of ATVs which have been cited for trespass shall be fined one hundred dollars for a first violation; two hundred dollars for a second violation within three hundred sixty-five days of the initial violation; and five hundred dollars for subsequent violations within three hundred sixty-five days of the initial violation. The money collected from the fines shall be put into the ATV trail fund established by section ninety-nine-z of the state finance law and shall be split fifty percent for enforcement,

education and remediation and the other fifty percent for trail maintenance and trail construction and development.

§ 11. This act shall take effect immediately.