

Chairman Michael A. Costello
State House Room 167
Boston, MA 02133

Chairman James E. Timilty
State House Room 507
Boston, MA 02133

September 9, 2009

Dear Chairman Costello, Chairman Timilty, and Honorable Members of the Committee,

I write today to express my support for House Bill 3330, *An Act Relative to the Regulation of Snow and Recreational Vehicles* and to respectfully request that the Committee give it a favorable report.

The Problem:

Current state law contains limited regulation with regards to the operation of snow and recreational vehicles, despite a recent dramatic increase in the sales of these vehicles in Massachusetts. Inadequate regulations, low registration rates, and insufficient enforcement resources pose a threat to public safety and the wellbeing of our environment and wildlife. The legislation before you improves these insufficient laws and will result in saved lives while also benefiting the environment.

Lack of adequate regulation of recreational vehicles is no small problem in Massachusetts, given that the Department of Conservation and Recreation estimates that approximately 90,000 Massachusetts households own All-Terrain Vehicles and off-highway motorcycles. Trespassing on private property and state conservation lands with snow and recreational

vehicles has become increasingly common, disturbing neighboring property owners and wildlife with excessive noise and obnoxious fumes, and endangering them with reckless operating techniques. In addition, illegal snow and recreational vehicle use can cause compaction and erosion of soils, -harming streams and other water bodies, - and can damage sensitive habitats, historic resources, wetlands, and vegetation.

What this legislation does:

This legislation strengthens the laws regarding the use of snow and recreational vehicles in three ways: by enhancing rider safety, reducing environmental impacts, and increasing the fines for illegal snow and recreational vehicle use on municipal and state conservation lands. These collected fines and registration fees will be dedicated towards enforcement, development and maintenance of off-highway vehicle (OHV) trails, and promotion of public education regarding the risks and penalties associated with illegal snow and recreational vehicle use in. In addition, this legislation facilitates dialogue among stakeholders and encourages and supports the expansion of co-operative multi-agency efforts in education and enforcement.

This legislation improves public safety in several ways. It requires more stringent safety precautions to be taken when crossing public ways; obligates persons operating or riding recreations vehicles to wear protective gear; compels young operators to operate under adult supervision or to have a motor vehicle license; bans operators of snow vehicles and recreational vehicles from operating under the influence of alcohol or illicit substances; facilitates communication among OHV riders, land owners, law enforcement agencies, and other stakeholders by establishing an OHV Advisory Group similar to those in other states; restricts persons from operating snow and recreational vehicles on private property without explicit permission from the owner; disallows civilian possession of loaded, unlocked firearms on a snow or recreational vehicle; and enhances the ability of law enforcement officers to enforce all rules and regulations made under the authority.

This legislation promotes the wellbeing of wildlife and environmental conditions by reducing the allowable noise and fumes produced by snow and recreational vehicles, and bars persons from operating said vehicles in a manner that harasses wildlife, damages plants or the land, or endangers the lives and safety of the public.

Why this legislation is important:

As the number of snow and recreational vehicles in the Commonwealth continues to grow, the associated risks will only increase. The current lack of adequate regulation in this state has led to damage and disturbance of natural resources and is a public safety hazard resulting in numerous deaths and near-fatal injuries sustained by snow and recreational vehicle riders, with a disproportionately high rate among young riders. This legislation provides a clear and comprehensive set of standards relative to snow and recreational vehicles that will ensure the

prevention of such tragedies and enable snow and recreational vehicle owners to operate in a manner that ensures the safety of themselves, the public, and surrounding wildlife.

I respectfully urge you to favorably report this legislation out of committee and I look forward to working with you on this issue.

Sincerely,

Frank I. Smizik

January 6, 2010

The Honorable Steven C. Panagiotakos
Committee on Ways and Means, Senate Chair
State House, Room 212
Boston, MA 02133

RE: AN ACT RELATIVE TO THE REGULATION OF SNOW AND
RECREATION VEHICLES (S 2235)

Dear Senator Panagiotakos:

I am writing on behalf of the Department of Conservation and Recreation (DCR) and the Office of Law Enforcement (OLE) regarding the senate petition to revise laws pertaining to the operation of off highway vehicles (OHV's), or recreation vehicles such as snowmobiles, trail motorcycles and all terrain vehicles (ATV's). DCR and OLE strongly supports many elements of this petition including its requirements for more meaningful penalties for unsafe and illegal use and its mandate for educational programs for young enthusiasts. However, this version of the legislation departs from the recommendations of the 2008 OHV Enforcement Working Group in some important ways including eliminating a key funding source and therefore dramatically limiting the public safety and resource protection benefits that might otherwise be achieved through this important legislation. DCR and OLE offer the following recommendations for making this important legislation even more effective.

Background

Dramatic growth in motorized trail recreation in the last decade and the lack of appropriate riding areas has resulted in widespread complaints about illegal off highway vehicle (OHV) use, significant environmental impacts on public and private lands and serious safety risks for users and non-users alike. Recognizing these concerns, in 2007 the Executive Office of Energy and Environmental Affairs and the Department of Conservation and

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Recreation invited a broad group of stakeholders including law enforcement agencies, public and private land managers, OHV enthusiasts and environmental advocates to examine the specific challenges of OHV enforcement in the Commonwealth and recommend key improvements. After months of work, the diverse membership of the Off Highway Vehicle Enforcement Working Group reached consensus on more than forty specific recommendations for improving the state of OHV enforcement in Massachusetts.

Senate bill 2236 incorporates each of the key statutory provisions recommended by the OHV Enforcement Working Group. This bill increases fines and penalties for illegal OHV use; requires safety training for all OHV operators 18 years old and younger; establishes a fund to support enforcement efforts and the development and maintenance of OHV trails; reduces allowable OHV noise; protects children by strengthening requirements for adult supervision of young operators; and strengthens communication among OHV riders, land owners, law enforcement agencies, and other stakeholders by establishing an OHV Advisory Group similar to those in other states.

However, the current bill has its limitations and DCR and OLE offer comments in four specific areas.

Funding the OHV Program Fund

S2236 fails to include in the OHV Program Fund the most significant source of OHV related funding - vehicle registration revenue. This omission would significantly limit the effectiveness of all of the important achievements within this legislation. Currently, OHV registration revenues generate \$800,000.00 per year. Fines and penalties currently generate \$20,000.00 - \$50,000 per year. While penalty revenue is expected to increase under this legislation, it is unlikely that the "seventy five percent" of penalty revenues directed to the OHV Program Fund allowed in this bill will significantly improve the OHV enforcement capacity of the Office of Environmental Law Enforcement or the ability of DCR and other recreation providers to develop and maintain designated OHV trails. The expense OLE dedicates out of

state budget funds to register and provide a significant informational packet for these vehicles would not be met which in turn limits their enforcement capabilities. Additional Safety and Education requirements associated with the legislation will most definitely fall on the Environmental Police and the Boating and All Terrain Vehicle Safety Bureau. Any additional educational programs without funding would be difficult to manage as Environmental Police Officers currently function at a high capacity on both straight and overtime hours.

DCR and OLE strongly encourages the following change to restore reasonable funding to achieve the purpose of this legislation.

In line 60, following the words "There shall be credited to the fund", add "all fees collected by the commonwealth pursuant to sections 21 to 32 inclusive, of chapter 90B, and"

Age Restrictions for OHV Use

Age restrictions for OHV use is a difficult and divisive topic. During the OHV Enforcement Working Group discussions, passionate and knowledgeable representatives on both sides of the debate spoke with the conviction of their beliefs. The Working Group reached consensus on provisions that required direct adult supervision for riders under the age of 14 and authorized the Director of the Office of Environmental Law Enforcement to develop further regulations relative to the age and size of OHV users in consultation with the OHV Advisory Committee and through the established public process for promulgating regulations. DCR and OLE encourages the committee to reconsider these recommendations.

Consistency for Sound Levels Within State Law

Section 14 of the bill revises Chapter 90B to establish maximum sound levels for snow vehicles and recreation vehicles. The bill does not also change Chapter 90, Section 7U which also addresses motorcycle sound levels. Therefore, DCR and OLE proposes deleting the second paragraph of Chapter 90, Section 7U and replacing with the following.

"No person shall operate a motorcycle intended for use off the highways of the commonwealth and registered under the provisions of section twenty-two of chapter ninety B at any time that exceeds ninety six dbA when measured from a distance of twenty inches using test procedures established by the Society of Automotive Engineers under Standard J1287 Jul98 or with such other test procedure for measurement of sound pressure levels as the registrar of motor vehicles may adopt. For enforcement purposes a tolerance of plus two decibels shall be applied to all measured sound levels of in-use vehicles to provide for variances in equipment calibration, measurement site characteristics and measurement techniques."

Birthdate Requiring Recreation Vehicle Safety Course

Section 19 of the bill introduces changes to Chapter 90B. In the new section 26 F, it states, "All operators of recreation vehicles born after January 1, 1990 shall successfully complete a recreation vehicle safety course approved by the Director of the Office of Environmental Law Enforcement." The intent of the Working Group was to ensure that all recreation vehicle operators under the age of eighteen complete this safety and responsibility training program. The date above anticipated passage of the bill in 2008. DCR and OLE recommends that the date be changed from "January 1, 1990" to "January 1, 1991" or other date appropriate to the passage of the legislation in order to remain consistent with the Working Group recommendations. This provision without proper or adequate funding will place a heavy burden on the Office of Law Enforcement to achieve the goals stated. Printing of safety materials and safety course structure and monitoring will require funding for staff and logistics.

Achieving consensus among diverse participants in the OHV Enforcement Working Group demonstrates that the problems with OHV enforcement in Massachusetts today are universally apparent and that there is a genuine desire among stakeholders to take corrective measures. With some key changes, S2235 offers meaningful change that can be broadly supported by a wide range of interests.

DCR and OLE appreciates the opportunity to share comments on this important legislation. If you have any questions, please feel free to call me, Gary Briere, DCR's Recreation Bureau Chief (508) 769-2304, Priscilla Geigis, Director of State Parks and Recreation, at (617) 626-4986 or OLE representative Captain George Agganis (617) 549-8480. Thank you for your time and consideration.

Sincerely

Commissioner Richard K. Sullivan, Jr., DCR
Director Aaron Gross, OLE