

# **Subject: SB400 - Past, Present and Future**

Date: September 28, 2005

From: Gary Clinard

To: Nevada Legislative Committee on Public Lands

## **1. Past**

The original intent of SB400 as drafted by responsible OHV owners was to address a number of issues related to sales tax collection for out-of-state purchases, OHV registration, a funded OHV program and OHV access rights. The original draft still stands as the most comprehensive blueprint for future OHV legislation.

## **2. Present**

The bill as passed substitutes a free "Certificate of Operation" plan instead of registration to address the sales tax issue, has no OHV program, and includes most OHV access rights. The bill lacks a effective OHV registration plan, has no OHV program funding and no OHV program administration. As a result of the political process in passing SB400, the Department of Motor Vehicles no longer will title Off Highway Vehicles. The Department of Taxation is now addressing how to implement the Certificate of Operation provisions of SB400 assigned to that department. Rural communities are actively planning OHV access rules and routes into their towns.

## **3. Future**

The future of Nevada OHV legislation falls into two categories: Implementation of the current SB400 and consideration of future legislation. Here are my views on these issues..

### **3.1 Administration of current law**

Below is a write up I submitted to the Department of Taxation regarding the administration of the current SB400.

SB400 in the form signed by the governor is quite different than originally intended regarding registration and documentation of Off Highway Vehicles. Since the signed bill does not setup an OHV registration program, there is no point in trying to make one out of it. Section 7 and subsections 2 and 3 of Section 8 of the act pertains to the Department of Taxation and its role in issuing the "Certificates of Operation" (COO) to the OHV dealers.

Having been present at the public and private meetings in Carson City when SB400 morphed into its current form, I hope to shed some insight into the "intent" of the current bill. During the "morphing" process there appeared to be four primary themes:

1. Give the dealers relief from out-of-state purchases that illegally avoid sales tax. Dealers believe registration would cure this problem.
2. Give the owners an incentive rather than a penalty to comply with the sales tax collection via expanded access rights to county roads, highways and towns.
3. Look to the future rather than the past regarding sales tax compliance and ignore the calls for retribution for past transgressions. Let time do its work.
4. Avoid any fiscal impacts that would trigger a veto. The Department of Taxation stepped forward on this issue. As an aside, a representative from the Department of Taxation stated in a meeting that COOs could be obtained from Department offices as well as dealers, but this is not written into the bill.

As to the COO, these points are clear:

1. It is a "Sticker". There are no size, design, color or legibility requirements.
2. It is attached to the vehicle both physically and mentally and not the owner of the vehicle.
3. For purchases after January 1, 2006, it proves compliance with Nevada Sales Tax law.
4. Prior to January 1, 2006, it is unclear what it proves.

**EXHIBIT G - LANDS**

**Document consists of 4 pages.**

**Entire Exhibit Provided - Meeting Date: 10-05-05**

5. If a COO is lost or damaged, it can be replaced.
6. If the vehicle is sold, the certificate remains valid. This provision could use some interpretation.
7. The issuance shall be expedient and secure.

The way the law is written OHV dealers are given authorization to perform the COO issuance function for free as if it were a privilege. Failure to comply with the regulations can cost them their COO authorization. It therefore follows that a dealer without COO authorization must be placed at a disadvantage compared to one with the authorization. I would speculate that the downside of not being able to issue COOs would be to punish their customers by making them go to another dealer for the sticker.

Since COOs are "free", there can be no crime in not paying for them. If a dealer issues a COO but fails to collect sales tax, the Department would know what to do. Refusing to issue or improperly issuing COOs to grandfathered OHVs would appear to be the major violations of the authorization.

Several groups (primarily snowmobilers and dealers) want the program to include registration attributes, such as expiring COOs and databases to search for lost or stolen vehicles. While this is clearly desirable, it is not mandated in the bill.

I propose the following plan to comply with the letter and intent of SB400.

1. Design a Sticker that is about 2.5" high by 4" wide predominated by a six character (2 letters, 4 numbers) COO control number made from license plate sticker material. In addition, a printed record of the COO issuance should be provided to the owner for the re-issue feature of the bill.

2. Create a database for storing minimum COO information:

Transaction type: (New issue, Lost sticker re-issue, Re-sell OHV, Inactivate due to scraping vehicle)  
 Documentation Provided (Title, MCO, Dealer Bill of Sale)  
 Issuing dealer ID (could be the sales tax ID)  
 Date of issue  
 Type of Vehicle: Snowmobile, Motorcycle, ATV, Dune Buggy, Other (per Section 6 of Bill)  
 Sales Tax Status: Paid in Nevada, Paid in other State, Casual Sale Exempt, Not paid  
 Make  
 Model  
 Year  
 Vehicle VIN  
 COO ID  
 Optional Initial Owner Name  
 Optional Initial Owner Address

When issuing a COO the major check should be verifying that the VIN has not been duplicated. Someone with several questionable OHVs would typically pick a known good VIN and attempt to get several COOs using this number or by using a scrapped vehicle's VIN. An owner obtaining an COO would not know that there is really no check for a reported stolen OHV.

In order to satisfy some groups wishing more information for lost vehicle recovery and information dissemination, this database should be made available to qualified groups, such as registered snowmobile and ATV associations or clubs that can provide a voluntary user registry.

3. In order to comply with the grandfather clause, dealer responsibility and the intent of rewarding good behavior, only the following documents could be used to obtain a COO for purchases prior to Jan. 1, 2006:

Valid Nevada Title with VIN  
 Valid out-of-state Title with VIN  
 Manufacturers Certificate of Origin VIN  
 Dealer Bill of Sale with VIN

Other documents, such as private party bills of sale would not be acceptable. The bill states that "Upon request, issue a Certificate of Operation to a person who purchased the off-highway vehicle before January 1, 2006." I believe that there should be conclusive proof of "purchase" tied to the request. Although some may argue about it, I don't think lax record keeping or questionable vehicle procurement should be rewarded.

4. When a used OHV is re-sold by an authorized dealer collecting sales (use?) tax, a new COO should be issued to the vehicle using the re-sale transaction.

5. If a COO is lost or damaged, the replacement must require presentation of the printed record of the original COO issue per #1 above.

6. Issuing COOs to OHVs without proper documentation would satisfy the dealer violation revocation requirement of the bill,

These are my thoughts on the program. Please call or e-mail me if you have any questions, comments or want me to expand on any item, or if I have missed something important. Let me know when the next workshop is scheduled.

### **3.2 Future Legislation**

Future legislation needs to address the issues in the draft SB400 bill that were deleted in the bill signed by the governor. These issues include a true registration program, an OHV program with funding, a committee to oversee an OHV program, and the option for licensing ATVs. The importance of each of these issues has been magnified by the passage of the current SB400 and recent events in other states.

#### **3.2.1 Registration**

The current bill does not truly address the registration of OHVs for the purpose of reducing theft, providing clear proof of ownership and participating in reciprocal agreements with other states. During the hearings and workshops on SB400 the Department of Motor Vehicles was extremely uncooperative by grossly inflating the task of administering a registration program, refusing to address the ATV licensing issue, and in general rejecting any tasks the bill might impose on the department. Finally they decided to no longer issue titles on OHVs, a service they have historically performed using the titling fees collected for this task. This refusal to now perform a historically important service makes the issue of registration even more imperative. Lack of titles will make financing of OHVs more difficult and will make theft even easier.

There are unconfirmed reports that California will not honor Nevada's SB400 Certificates of Operation because there is no funded OHV program associated with the new law.

The registration plan set forth in the SB400 draft still addresses the major issues, such as what to do with "grandfathered" vehicles. Any future legislation will have to address the DMV issue as well.

#### **3.2.2 OHV Program and Program Funding**

Increased regulation activities on the part of the Federal Land Managers (BLM and Forest Service) and the current development of OHV recreation facilities point out the need for a funded OHV program. In all other states with OHV programs, the major funding source is the tax imposed on fuel used off-highway. The registration fees themselves typically cover the cost of administering the registration program and do little to fund OHV projects. During the formalized drafting of SB400 a Nevada Constitutional issue arose regarding funds from registration and from fuel tax. Article 9, Section 5 of the constitution states:

*Proceeds from fees for licensing and registration of motor vehicles and excise taxes on fuel reserved for construction, maintenance and repair of public highways; exception. The proceeds from the imposition of any license or registration fee and other charge with respect to the operation of any motor vehicle upon any public highway in this State and the proceeds from the imposition of any excise tax on gasoline or other motor vehicle fuel shall, except costs of administration, be used exclusively for the construction, maintenance, and repair of the public highways of this State. The provisions of this section do not apply to*

*the proceeds of any tax imposed upon motor vehicles by the Legislature in lieu of an ad valorem property tax.*

This section, as interpreted by the bill drafter, severely limits what can be done with registration fees and taxes on fuels used off public highways. However, Nevada law allows for refunds of fuel taxes used off-highway for a number of users, such as agriculture and construction. . The refund forms do not have an Off-highway vehicle category, so it is unclear if their use qualifies for a refund. Perhaps a new bill could divert fuel tax refunds for off-highway vehicle use to an OHV fund.

### **3.2.3 OHV Fund Control**

The SB400 draft created a OHV committee composed of qualified enthusiasts who would recommend the OHV fund grants. During the hearings and workshops a number of anti-access environmental groups attempted to gain positions on the committee and to dictate the use of OHV funds. When drafting of the SB400 prototype the single most important issue was preventing another "California". By political appointments, the California OHV program was taken over by anti-OHV groups, turning the program against the OHV owners. A recent audit of the California OHV program has revealed misuse of the funds, gross misconduct, illegal contracting activity, and criminal intent on the part of these anti-OHV zealots. The Nevada OHV owners must stand firm against demands from these same forces in Nevada.

### **3.3.4 ATV License Option**

Due to the DMV's rejection of any additional workload, the ATV licensing option plan was not pursued. Most of the proposed access rights for licensed ATV option were included in the final version of the bill. However, without the licensing option, Nevada ATV owners are still faced with severe access problems in neighboring states such as Arizona and Idaho. Idaho, Montana, Arizona and Wyoming have all had a licensed ATV option for many years with very positive results.

### **Conclusion**

Prior commitments prevent me from attending the meeting in Elko on October 5, 2005. However I am very interested in remaining involved in Nevada OHV issues.

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