
SENATE BILL 6901

State of Washington

60th Legislature

2008 Regular Session

By Senator Jacobsen

Read first time 02/01/08. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to addressing environmental impacts from off-road
2 vehicle use; amending RCW 46.09.030, 46.09.040, 46.09.050, 46.09.070,
3 46.09.080, 46.09.085, 46.09.117, 4.24.210, 46.09.120, and 46.09.200;
4 reenacting and amending RCW 46.09.170; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that, as the
7 population of Washington and the popularity of recreational off-road
8 vehicle or ORV use have increased, unauthorized ORV use on public and
9 private natural resource lands has resulted in significant
10 environmental damage.

11 ORV damage typically involves soil disturbance, erosion, or
12 rutting, but may also include damage to vegetation or property. Stream
13 banks and lakeshores are especially sensitive areas and easily
14 susceptible to damage. These riparian areas provide water, food, and
15 shelter to wildlife. The number of dirt bikes and all-terrain vehicles
16 has nearly tripled across the country since 1993, a phenomenon that
17 critics and land managers state comes at increasing cost to a
18 vulnerable landscape.

1 This situation is forcing a change in thinking over management of
2 motorized recreation by land managers. Therefore, the legislature
3 intends to take steps to prevent further environmental damage to public
4 and private natural resource lands caused by unauthorized ORV damage.

5 **Sec. 2.** RCW 46.09.030 and 1990 c 250 s 23 are each amended to read
6 as follows:

7 The department shall provide for the issuance of use permits and
8 identification plates for off-road vehicles and may appoint agents for
9 collecting fees and issuing permits. The department shall charge each
10 applicant for registration the actual cost of the decal. The
11 department shall make available replacement decals for a fee equivalent
12 to the actual cost of the decals. The provisions of RCW 46.01.130 and
13 46.01.140 apply to the issuance of use permits for off-road vehicles as
14 they do to the issuance of vehicle licenses, the appointment of agents
15 and the collection of application fees.

16 **Sec. 3.** RCW 46.09.040 and 1977 ex.s. c 220 s 3 are each amended to
17 read as follows:

18 Except as provided in this chapter, no person shall operate any
19 off-road vehicle within this state after January 1, 1978, unless the
20 off-road vehicle has been assigned an ORV use permit and displays ((a))
21 an identification plate and current ORV tag in accordance with the
22 provisions of this chapter: PROVIDED, That registration and display of
23 an unexpired ATV use permit shall be deemed to have complied with this
24 section.

25 **Sec. 4.** RCW 46.09.050 and 2004 c 105 s 9 are each amended to read
26 as follows:

27 ORV use permits, identification plates, and ORV tags shall be
28 required under the provisions of this chapter except for the following:

- 29 (1) Off-road vehicles owned and operated by the United States,
30 another state, or a political subdivision thereof.
- 31 (2) Off-road vehicles owned and operated by this state, or by any
32 municipality or political subdivision thereof.
- 33 (3) Off-road vehicles operated on agricultural lands owned or
34 leased by the ORV owner or operator.

1 (4) Off-road vehicles owned by a resident of another state that
2 have a valid ORV permit or vehicle license issued in accordance with
3 the laws of the other state. This exemption shall apply only to the
4 extent that a similar exemption or privilege is granted under the laws
5 of that state.

6 (5) Off-road vehicles while being used for search and rescue
7 purposes under the authority or direction of an appropriate search and
8 rescue or law enforcement agency.

9 (6) Vehicles which are licensed pursuant to chapter 46.16 RCW or in
10 the case of nonresidents, vehicles which are validly licensed for
11 operation over public highways in the jurisdiction of the owner's
12 residence.

13 **Sec. 5.** RCW 46.09.070 and 2004 c 106 s 1 are each amended to read
14 as follows:

15 (1) Application for annual or temporary ORV use permits shall be
16 made to the department or its authorized agent in such manner and upon
17 such forms as the department shall prescribe and shall state the name
18 and address of each owner of the off-road vehicle.

19 (2) An application for an annual permit shall be signed by at least
20 one owner, and shall be accompanied by a fee of eighteen dollars. Upon
21 receipt of the annual permit application and the application fee, the
22 off-road vehicle shall be assigned a use permit number tag or decal,
23 which shall be affixed to the off-road vehicle in a manner prescribed
24 by the department. The annual permit is valid for a period of one year
25 and is renewable each year in such manner as the department may
26 prescribe for an additional period of one year upon payment of a
27 renewal fee of eighteen dollars.

28 Any person acquiring an off-road vehicle for which an annual permit
29 has been issued who desires to continue to use the permit must, within
30 fifteen days of the acquisition of the off-road vehicle, make
31 application to the department or its authorized agent for transfer of
32 the permit, and the application shall be accompanied by a transfer fee
33 of five dollars.

34 (3) A temporary use permit is valid for sixty days. Application
35 for a temporary permit shall be accompanied by a fee of seven dollars.
36 The permit shall be carried on the vehicle at all times during its
37 operation in the state.

1 (4) Except as provided in RCW 46.09.050, any out-of-state operator
2 of an off-road vehicle shall, when operating in this state, comply with
3 this chapter, and if an ORV use permit is required under this chapter,
4 the operator shall obtain an annual or temporary permit and tag.

5 (5) The department must distribute an ORV identification plate with
6 each ORV use permit distributed during the calendar year following the
7 effective date of this section. Thereafter, the department shall
8 distribute identification plates in such manner and upon such forms as
9 the department shall prescribe. The department must imprint a unique
10 identification number on each identification tag. Identification
11 plates issued must be no smaller than vehicle license plates required
12 under RCW 46.16.010, and must be designed to maximize the visibility of
13 the identification number. The department may impose a charge for the
14 actual cost of each identification plate issued.

15 **Sec. 6.** RCW 46.09.080 and 1990 c 250 s 24 are each amended to read
16 as follows:

17 (1) Each dealer of off-road vehicles in this state who does not
18 have a current "dealer's plate" for vehicle use pursuant to chapter
19 46.70 RCW shall obtain an ORV dealer permit from the department in such
20 manner and upon such forms as the department shall prescribe. Upon
21 receipt of an application for an ORV dealer permit and the fee under
22 subsection (2) of this section, the dealer shall be registered and an
23 ORV dealer permit number assigned.

24 (2) The fee for ORV dealer permits shall be twenty-five dollars per
25 year, which covers all of the off-road vehicles owned by a dealer and
26 not rented. Off-road vehicles rented on a regular, commercial basis by
27 a dealer shall have separate use permits.

28 (3) Upon the issuance of an ORV dealer permit each dealer may
29 purchase, at a cost to be determined by the department, ORV dealer
30 number plates of a size and color to be determined by the department,
31 that contain the dealer ORV permit number assigned to the dealer. Each
32 off-road vehicle operated by a dealer, dealer representative, or
33 prospective customer for the purposes of testing or demonstration shall
34 display such number plates assigned pursuant to the dealer permit
35 provisions in chapter 46.70 RCW or this section, in a manner prescribed
36 by the department.

1 (4) No dealer, dealer representative, or prospective customer shall
2 use such number plates for any purpose other than the purpose
3 prescribed in subsection (3) of this section.

4 (5) ORV dealer permit numbers shall be nontransferable.

5 (6) It is unlawful for any dealer to sell any off-road vehicle at
6 wholesale or retail or to test or demonstrate any off-road vehicle
7 within the state unless he has a motor vehicle dealers' license
8 pursuant to chapter 46.70 RCW or an ORV dealer permit number in
9 accordance with this section.

10 (7) When an ORV is sold by a dealer, the dealer shall apply for
11 title in the purchaser's name within fifteen days following the sale.

12 (8) ORV dealer plates serve as valid ORV identification plates.
13 The department must ensure that ORV dealer plates meet the requirement
14 of RCW 46.09.070(5).

15 **Sec. 7.** RCW 46.09.085 and 2004 c 105 s 10 are each amended to read
16 as follows:

17 Except as provided in RCW 46.09.050, it is unlawful for any dealer
18 to sell at retail an off-road vehicle without an ORV use permit and
19 identification plate required in RCW 46.09.040.

20 **Sec. 8.** RCW 46.09.117 and 2005 c 213 s 5 are each amended to read
21 as follows:

22 (1) Except as specified in subsection (2) of this section, no
23 person (~~((under thirteen years of age))~~) without a valid license to
24 operate a motor vehicle under chapter 46.20 RCW may operate an off-road
25 vehicle on or across a highway or nonhighway road in this state.

26 (2) Persons (~~((under thirteen years of age))~~) may operate an off-road
27 vehicle on a nonhighway road designated for off-road vehicle use under
28 the direct supervision of a person eighteen years of age or older
29 possessing a valid license to operate a motor vehicle under chapter
30 46.20 RCW.

31 **Sec. 9.** RCW 4.24.210 and 2006 c 212 s 6 are each amended to read
32 as follows:

33 (1) Except as otherwise provided in subsection (3) or (4) of this
34 section, any public or private landowners or others in lawful
35 possession and control of any lands whether designated resource, rural,

1 or urban, or water areas or channels and lands adjacent to such areas
2 or channels, who allow members of the public to use them for the
3 purposes of outdoor recreation, which term includes, but is not limited
4 to, the cutting, gathering, and removing of firewood by private persons
5 for their personal use without purchasing the firewood from the
6 landowner, hunting, fishing, camping, picnicking, swimming, hiking,
7 bicycling, skateboarding or other nonmotorized wheel-based activities,
8 hanggliding, paragliding, rock climbing, the riding of horses or other
9 animals, clam digging, pleasure driving of off-road vehicles,
10 snowmobiles, and other vehicles, boating, nature study, winter or water
11 sports, viewing or enjoying historical, archaeological, scenic, or
12 scientific sites, without charging a fee of any kind therefor, shall
13 not be liable for unintentional injuries to such users.

14 (2) Except as otherwise provided in subsection (3) or (4) of this
15 section, any public or private landowner or others in lawful possession
16 and control of any lands whether rural or urban, or water areas or
17 channels and lands adjacent to such areas or channels, who offer or
18 allow such land to be used for purposes of a fish or wildlife
19 cooperative project, or allow access to such land for cleanup of litter
20 or other solid waste, shall not be liable for unintentional injuries to
21 any volunteer group or to any other users.

22 (3) Any public or private landowner, or others in lawful possession
23 and control of the land, may charge an administrative fee of up to
24 twenty-five dollars for the cutting, gathering, and removing of
25 firewood from the land.

26 (4)(a) Nothing in this section shall prevent the liability of a
27 landowner or others in lawful possession and control for injuries
28 sustained to users by reason of a known dangerous artificial latent
29 condition for which warning signs have not been conspicuously posted.
30 However, a fixed anchor used in rock climbing and put in place by
31 someone other than a landowner is not a known dangerous artificial
32 latent condition and a landowner under subsection (1) of this section
33 shall not be liable for unintentional injuries resulting from the
34 condition or use of such an anchor. Additionally, a public or private
35 landowner under subsection (1) of this section shall not be liable for
36 unintentional injuries resulting from the condition or use of the land
37 where the person is injured while operating an off-road vehicle without

1 landowner authorization or outside of authorized off-road vehicle use
2 areas.

3 (b) Nothing in RCW 4.24.200 and this section limits or expands in
4 any way the doctrine of attractive nuisance.

5 (c) Usage by members of the public, volunteer groups, or other
6 users is permissive and does not support any claim of adverse
7 possession.

8 (5) For purposes of this section, the following are not fees:

9 (a) A license or permit issued for statewide use under authority of
10 chapter 79A.05 RCW or Title 77 RCW; and

11 (b) A daily charge not to exceed twenty dollars per person, per
12 day, for access to a publicly owned ORV sports park, as defined in RCW
13 46.09.020, or other public facility accessed by a highway, street, or
14 nonhighway road for the purposes of off-road vehicle use.

15 **Sec. 10.** RCW 46.09.170 and 2007 c 522 s 953 and 2007 c 241 s 16
16 are each reenacted and amended to read as follows:

17 (1) From time to time, but at least once each year, the state
18 treasurer shall refund from the motor vehicle fund one percent of the
19 motor vehicle fuel tax revenues collected under chapter 82.36 RCW,
20 based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle
21 fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per
22 gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007;
23 (c) twenty-one cents per gallon of motor vehicle fuel from July 1,
24 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor
25 vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-
26 three cents per gallon of motor vehicle fuel beginning July 1, 2011,
27 and thereafter, less proper deductions for refunds and costs of
28 collection as provided in RCW 46.68.090.

29 (2) The treasurer shall place these funds in the general fund as
30 follows:

31 (a) Thirty-six percent shall be credited to the ORV and nonhighway
32 vehicle account and administered by the department of natural resources
33 solely for acquisition, planning, development, maintenance, and
34 management of ORV, nonmotorized, and nonhighway road recreation
35 facilities, and information programs and maintenance of nonhighway
36 roads;

1 (b) Three and one-half percent shall be credited to the ORV and
2 nonhighway vehicle account and administered by the department of fish
3 and wildlife solely for the acquisition, planning, development,
4 maintenance, and management of ORV, nonmotorized, and nonhighway road
5 recreation facilities and the maintenance of nonhighway roads;

6 (c) Two percent shall be credited to the ORV and nonhighway vehicle
7 account and administered by the parks and recreation commission solely
8 for the acquisition, planning, development, maintenance, and management
9 of ORV, nonmotorized, and nonhighway road recreation facilities; and

10 (d) Fifty-eight and one-half percent shall be credited to the
11 nonhighway and off-road vehicle activities program account to be
12 administered by the board for planning, acquisition, development,
13 maintenance, and management of ORV, nonmotorized, and nonhighway road
14 recreation facilities and for education, information, and law
15 enforcement programs. The funds under this subsection shall be
16 expended in accordance with the following limitations:

17 (i) Not more than thirty percent may be expended for education,
18 information, and law enforcement programs under this chapter;

19 (ii) Not less than seventy percent may be expended for ORV,
20 nonmotorized, and nonhighway road recreation facilities. Except as
21 provided in (d)(iii) of this subsection, of this amount:

22 (A) Not less than thirty percent, together with the funds the board
23 receives under RCW 46.09.110, may be expended for ORV recreation
24 facilities. Prior to expending funds for ORV recreation facilities,
25 the board must accept applications and fund appropriate projects
26 submitted by the department of natural resources, the department of
27 fish and wildlife, and the parks and recreation commission to repair or
28 mitigate for soil erosion or damage to trees, crops, riparian areas, or
29 other vegetation resulting from unauthorized off-road vehicle use;

30 (B) Not less than thirty percent may be expended for nonmotorized
31 recreation facilities. Funds expended under this subsection
32 (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation
33 facilities funds; and

34 (C) Not less than thirty percent may be expended for nonhighway
35 road recreation facilities;

36 (iii) The board may waive the minimum percentage cited in (d)(ii)
37 of this subsection due to insufficient requests for funds or projects

1 that score low in the board's project evaluation. Funds remaining
2 after such a waiver must be allocated in accordance with board policy.

3 (3) On a yearly basis an agency may not, except as provided in RCW
4 46.09.110, expend more than ten percent of the funds it receives under
5 this chapter for general administration expenses incurred in carrying
6 out this chapter.

7 (4) During the 2007-09 fiscal biennium, the legislature may
8 appropriate such amounts as reflect the excess fund balance in the NOVA
9 account to the department of natural resources for planning and
10 designing consistent off-road vehicle signage at department-managed
11 recreation sites, and for planning recreation opportunities on
12 department-managed lands in the Reiter block and Ahtanum state forest.
13 This appropriation is not required to follow the specific distribution
14 specified in subsection (2) of this section.

15 **Sec. 11.** RCW 46.09.120 and 2006 c 212 s 3 are each amended to read
16 as follows:

17 (1) Except as provided in subsection (4) of this section, it is a
18 traffic infraction for any person to operate any nonhighway vehicle:

19 (a) In such a manner as to endanger the property of another;

20 (b) On lands not owned by the operator or owner of the nonhighway
21 vehicle without a lighted headlight and taillight between the hours of
22 dusk and dawn, or when otherwise required for the safety of others
23 regardless of ownership;

24 (c) On lands not owned by the operator or owner of the nonhighway
25 vehicle without an adequate braking device or when otherwise required
26 for the safety of others regardless of ownership;

27 (d) Without a spark arrester approved by the department of natural
28 resources;

29 (e) Without an adequate, and operating, muffling device which
30 effectively limits vehicle noise to no more than eighty-six decibels on
31 the "A" scale at fifty feet as measured by the Society of Automotive
32 Engineers (SAE) test procedure J 331a, except that a maximum noise
33 level of one hundred and five decibels on the "A" scale at a distance
34 of twenty inches from the exhaust outlet shall be an acceptable
35 substitute in lieu of the Society of Automotive Engineers test
36 procedure J 331a when measured:

1 (i) At a forty-five degree angle at a distance of twenty inches
2 from the exhaust outlet;

3 (ii) With the vehicle stationary and the engine running at a steady
4 speed equal to one-half of the manufacturer's maximum allowable ("red
5 line") engine speed or where the manufacturer's maximum allowable
6 engine speed is not known the test speed in revolutions per minute
7 calculated as sixty percent of the speed at which maximum horsepower is
8 developed; and

9 (iii) With the microphone placed ten inches from the side of the
10 vehicle, one-half way between the lowest part of the vehicle body and
11 the ground plane, and in the same lateral plane as the rearmost exhaust
12 outlet where the outlet of the exhaust pipe is under the vehicle;

13 (f) On lands not owned by the operator or owner of the nonhighway
14 vehicle upon the shoulder or inside bank or slope of any nonhighway
15 road or highway, or upon the median of any divided highway;

16 ~~(g) ((On lands not owned by the operator or owner of the nonhighway
17 vehicle in any area or in such a manner so as to unreasonably expose
18 the underlying soil, or to create an erosion condition, or to injure,
19 damage, or destroy trees, growing crops, or other vegetation;~~

20 ~~(h))~~ On lands not owned by the operator or owner of the nonhighway
21 vehicle or on any nonhighway road or trail, when these are restricted
22 to pedestrian or animal travel;

23 ~~((i))~~ (h) On any public lands in violation of rules and
24 regulations of the agency administering such lands; and

25 ~~((j))~~ (i) On a private nonhighway road in violation of RCW
26 46.09.115(3).

27 (2) It is a misdemeanor for any person to:

28 (a) Operate any nonhighway vehicle while under the influence of
29 intoxicating liquor or a controlled substance; or

30 (b) Operate any nonhighway vehicle on lands not owned by the
31 operator or owner of the nonhighway vehicle in any area or in such a
32 manner so as to unreasonably expose the underlying soil; create an
33 erosion condition; or injure, damage, or destroy trees, growing crops,
34 or other vegetation.

35 (3)(a) Except for an off-road vehicle equipped with seat belts and
36 roll bars or an enclosed passenger compartment, it is a traffic
37 infraction for any person to operate or ride an off-road vehicle on a
38 nonhighway road without wearing upon his or her head a motorcycle

1 helmet fastened securely while in motion. For purposes of this
2 section, "motorcycle helmet" has the same meaning as provided in RCW
3 46.37.530.

4 (b) Subsection (3)(a) of this section does not apply to an off-road
5 vehicle operator operating on his or her own land.

6 (c) Subsection (3)(a) of this section does not apply to an off-road
7 vehicle operator operating on agricultural lands owned or leased by the
8 off-road vehicle operator or the operator's employer.

9 (4) It is not a traffic infraction to operate an off-road vehicle
10 on a street, road, or highway as authorized under RCW 46.09.180.

11 **Sec. 12.** RCW 46.09.200 and 2001 c 253 s 3 are each amended to read
12 as follows:

13 (1) The provisions of this chapter shall be enforced by all persons
14 having the authority to enforce any of the laws of this state,
15 including, without limitation, officers of the state patrol, county
16 sheriffs and their deputies, all municipal law enforcement officers
17 within their respective jurisdictions, fish and wildlife officers,
18 state park rangers, and those employees of the department of natural
19 resources designated by the commissioner of public lands under RCW
20 ((43.30.310)) 43.12.065, 76.04.035, and 76.04.045.

21 (2)(a) Whenever any law enforcement officer authorized to enforce
22 this chapter has probable cause to believe that a person is operating
23 any nonhighway vehicle in violation of RCW 46.09.120(2)(b), the officer
24 may seize the nonhighway vehicle.

25 (b) Proceedings for forfeiture shall be deemed commenced by the
26 seizure. The law enforcement agency under whose authority the seizure
27 was made shall cause notice to be served within fifteen days following
28 the seizure on the owner of the property seized and the person in
29 charge thereof and any person having any known right or interest
30 therein, including any community property interest, of the seizure and
31 intended forfeiture of the seized property. The notice of seizure may
32 be served by any method authorized by law or court rule including but
33 not limited to service by certified mail with return receipt requested.
34 Service by mail shall be deemed complete upon mailing within the
35 fifteen-day period following the seizure.

36 (c) If no person notifies the seizing law enforcement agency in

1 writing of the person's claim of ownership or right to possession of
2 items specified in (a) of this subsection within forty-five days of the
3 seizure, the item seized shall be deemed forfeited.

4 (d) If a person notifies the seizing law enforcement agency in
5 writing of the person's claim of ownership or right to possession of
6 the seized property within forty-five days of the seizure, the law
7 enforcement agency shall give the person or persons a reasonable
8 opportunity to be heard as to the claim or right. The hearing shall be
9 before the chief law enforcement officer of the seizing agency or the
10 chief law enforcement officer's designee, except where the seizing
11 agency is a state agency as defined in RCW 34.12.020(4), the hearing
12 shall be before the chief law enforcement officer of the seizing agency
13 or an administrative law judge appointed under chapter 34.12 RCW,
14 except that any person asserting a claim or right may remove the matter
15 to a court of competent jurisdiction. Removal may only be accomplished
16 according to the rules of civil procedure. The person seeking removal
17 of the matter must serve process against the state, county, political
18 subdivision, or municipality that operates the seizing agency, and any
19 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
20 within forty-five days after the person seeking removal has notified
21 the seizing law enforcement agency of the person's claim of ownership
22 or right to possession. The court to which the matter is to be removed
23 shall be the district court when the aggregate value of the property is
24 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
25 before the seizing agency and any appeal therefrom shall be under Title
26 34 RCW. In a court hearing between two or more claimants to the
27 property involved, the prevailing party shall be entitled to a judgment
28 for costs and reasonable attorneys' fees. The burden of producing
29 evidence shall be upon the person claiming to be the lawful owner or
30 the person claiming to have the lawful right to possession of the
31 property. The seizing law enforcement agency shall promptly return the
32 property to the claimant upon a determination by the administrative law
33 judge or court that the claimant is the present lawful owner or is
34 lawfully entitled to possession of the property.

35 (e) When property is forfeited under this chapter, the seizing law
36 enforcement agency may:

37 (i) Retain it for official use or upon application by any law

1 enforcement agency of this state release such property to such agency
2 for the exclusive use for law enforcement purposes; or
3 (ii) Sell the property and use moneys received exclusively for the
4 expansion and improvement of law enforcement activity. Money retained
5 under this section may not be used to supplant preexisting funding
6 sources.

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