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SENATE BILL 5544

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Fraser, Poulsen, Fairley, Weinstein, Jacobsen, Franklin and Kline

Read first time 01/23/2007.      Referred to Committee on Consumer Protection & Housing.

1            AN ACT Relating to environmental noise abatement; amending RCW  
2 46.09.120, 46.09.190, 70.107.060, 70.107.050, 70.107.020, and  
3 46.09.020; adding new sections to chapter 70.107 RCW; adding a new  
4 section to chapter 46.09 RCW; and prescribing penalties.

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

6            **Sec. 1.** RCW 46.09.120 and 2006 c 212 s 3 are each amended to read  
7 as follows:

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

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

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

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

18            (d) Without a spark arrester approved by the department of natural  
19 resources;

1 (e) Without an adequate, and operating, muffling device which  
2 effectively limits vehicle noise to no more than (~~eighty-six decibels~~  
3 ~~on the "A" scale at fifty feet as measured by the Society of Automotive~~  
4 ~~Engineers (SAE) test procedure J 331a, except that a maximum noise~~  
5 ~~level of one hundred and five~~) ninety-six decibels on the "A" scale at  
6 a distance of twenty inches from the exhaust outlet (~~shall be an~~  
7 ~~acceptable substitute in lieu of~~) measured consistent with the Society  
8 of Automotive Engineers test procedure J (~~331a~~) 1287 when measured:

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

11 (ii) With the vehicle stationary and the engine running at a steady  
12 speed equal to one-half of the manufacturer's maximum allowable ("red  
13 line") engine speed or where the manufacturer's maximum allowable  
14 engine speed is not known the test speed in revolutions per minute  
15 calculated as sixty percent of the speed at which maximum horsepower is  
16 developed; and

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

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

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

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

31 (i) On any public lands in violation of rules and regulations of  
32 the agency administering such lands; (~~and~~)

33 (j) On a private nonhighway road in violation of RCW 46.09.115(3);  
34 and

35 (k) In such a manner where the noise created by the engine of the  
36 nonhighway vehicle is plainly audible inside or immediately adjacent to  
37 a residence.

1 (2) It is a misdemeanor for any person to operate any nonhighway  
2 vehicle while under the influence of intoxicating liquor or a  
3 controlled substance.

4 (3)(a) Except for an off-road vehicle equipped with seat belts and  
5 roll bars or an enclosed passenger compartment, it is a traffic  
6 infraction for any person to operate or ride an off-road vehicle on a  
7 nonhighway road without wearing upon his or her head a motorcycle  
8 helmet fastened securely while in motion. For purposes of this  
9 section, "motorcycle helmet" has the same meaning as provided in RCW  
10 46.37.530.

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

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

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

18 (5) For violations of subsection (1)(k) of this section only, the  
19 violator shall be subject to a penalty of not less than one hundred  
20 dollars per violation for a first violation. Subsequent violations of  
21 subsection (1)(k) of this section by the same person shall result in a  
22 penalty of not less than twice the penalty assessed for the previous  
23 violation, up to a maximum single penalty of eight hundred dollars.

24 **Sec. 2.** RCW 46.09.190 and 1979 ex.s. c 136 s 42 are each amended  
25 to read as follows:

26 (1) Except as provided in RCW 46.09.120(2) and 46.09.130 (~~as now~~  
27 ~~or hereafter amended~~), violation of the provisions of this chapter is  
28 a traffic infraction for which, except as provided in RCW 46.09.120(5),  
29 a penalty of not less than twenty-five dollars may be imposed.

30 (2) In addition to the penalties provided in subsection (1) of this  
31 section, the owner and/or the operator of any nonhighway vehicle shall  
32 be liable for any damage to property including damage to trees, shrubs,  
33 or growing crops injured as the result of travel by the nonhighway  
34 vehicle. The owner of such property may recover from the person  
35 responsible three times the amount of damage.

1       **Sec. 3.** RCW 70.107.060 and 1987 c 103 s 1 are each amended to read  
2 as follows:

3       (1) Nothing in this chapter shall be construed to deny, abridge or  
4 alter alternative rights of action or remedies in equity or under  
5 common law or statutory law, criminal or civil.

6       (2) Nothing in this chapter shall deny, abridge or alter any  
7 powers, duties and functions relating to noise abatement and control  
8 now or hereafter vested in any state agency, nor shall this chapter be  
9 construed as granting jurisdiction over the industrial safety and  
10 health of employees in work places of the state, as now or hereafter  
11 vested in the department of labor and industries.

12       (3) Standards and other control measures adopted by the department  
13 under this chapter shall be exclusive except as (~~hereinafter~~)  
14 otherwise provided in this section.

15       (4)(a) A local government may impose limits or control sources  
16 differing from those adopted or controlled by the department upon a  
17 finding that such requirements are necessitated by special conditions.  
18 Local governments are encouraged to impose narrative standards as an  
19 alternative to decibel limits if it is determined by the local  
20 government that narrative standards ease the enforcement of noise  
21 control by local law enforcement officers.

22       (b) Noise limiting requirements of local government which differ  
23 from those adopted or controlled by the department shall be invalid  
24 unless first approved by the department. If the department of ecology  
25 fails to approve or disapprove standards submitted by local  
26 governmental jurisdictions within ninety days of submittal, such  
27 standards shall be deemed approved. If disapproved, the local  
28 government may appeal the decision to the pollution control hearings  
29 board which shall decide the appeal on the basis of the provisions of  
30 this chapter, and the applicable regulations, together with such  
31 briefs, testimony, and oral argument as the hearings board in its  
32 discretion may require. The department determination of whether to  
33 grant approval shall depend on the reasonableness and practicability of  
34 compliance. Particular attention shall be given to stationary sources  
35 located near jurisdictional boundaries, and temporary noise producing  
36 operations which may operate across one or more jurisdictional  
37 boundaries.

1 ((4)) (5) In carrying out the rule-making authority provided in  
2 this chapter, the department shall follow the procedures of the  
3 administrative procedure act, chapter 34.05 RCW, and shall take care  
4 that no rules adopted purport to exercise any powers preempted by the  
5 United States under federal law.

6 **Sec. 4.** RCW 70.107.050 and 1987 c 103 s 2 are each amended to read  
7 as follows:

8 (1)(a) Any person who violates any rule adopted by the department  
9 under this chapter shall be subject to a civil penalty not to exceed  
10 one hundred dollars per violation for the first violation, which shall  
11 be imposed by local government pursuant to this section. (~~An action~~  
12 ~~under this section shall not preclude enforcement of any provisions of~~  
13 ~~the local government noise ordinance.~~) For each subsequent violation,  
14 the penalty imposed shall be twice the penalty assessed for the  
15 subsequent violation, up to a maximum of eight hundred dollars for any  
16 one violation.

17 (b) Penalties shall become due and payable thirty days from the  
18 date of receipt of a notice of penalty unless within such time said  
19 notice is appealed in accordance with the administrative procedures of  
20 the local government, or if it has no such administrative appeal, to  
21 the pollution control hearings board pursuant to the provisions of  
22 chapter 43.21B RCW and procedural rules adopted thereunder. In cases  
23 in which appeals are timely filed, penalties sustained by the local  
24 administrative agency or the pollution control hearings board shall  
25 become due and payable on the issuance of said agency or board's final  
26 order in the appeal.

27 (c) An action under this section shall not preclude enforcement of  
28 any provisions of the local government noise ordinance.

29 (2) Whenever penalties incurred pursuant to this section have  
30 become due and payable but remain unpaid, the attorney for the local  
31 government may bring an action in the superior court of the county in  
32 which the violation occurred for recovery of penalties incurred. In  
33 all such actions the procedures and rules of evidence shall be the same  
34 as in any other civil action.

35 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.107 RCW  
36 to read as follows:

1 (1) It is a violation of this chapter to operate a nonhighway  
2 vehicle in such a manner where the noise created by the engine of the  
3 nonhighway vehicle is plainly audible inside or immediately adjacent to  
4 a residence.

5 (2) A person found to have violated this section shall be subject  
6 to a penalty of not less than one hundred dollars per violation for a  
7 first violation. Subsequent violations of this section by the same  
8 person shall result in a penalty of not less than twice the penalty  
9 assessed for the previous violation, up to a maximum single penalty of  
10 eight hundred dollars.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.107 RCW  
12 to read as follows:

13 (1) Except as otherwise provided by this section, no person shall  
14 cause or permit noise to intrude into the property of another person  
15 with noise that exceeds the maximum permissible noise levels set under  
16 this chapter.

17 (2)(a) Noise from the combined activities of the starting,  
18 servicing, idling, revving, testing, or use for ingress or egress to  
19 allow sale or repair of a vehicle may be allowed as a duration  
20 exemption without violating subsection (1) of this section.

21 (b) To qualify for the duration exemption permitted by this  
22 section, any noise emitted:

23 (i) Must not exceed the decibel limits established under this  
24 chapter by more than ten decibels; and

25 (ii) May not occur for more than five minutes in any one twenty-  
26 four hour period between the hours of 7:00 a.m. and 10:00 p.m. If  
27 there is more than one vehicle involved, the five minute limitation  
28 applies to all vehicles combined.

29 (3) This section preempts any duration exemptions adopted under RCW  
30 70.107.030(2)(b) that exist now or in the future as applied to the  
31 operation of nonhighway vehicles in residential areas.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.107 RCW  
33 to read as follows:

34 A party who brings an action to enjoin the use of nonhighway  
35 vehicles being operated in a manner that is in violation of this  
36 chapter or of any other noise laws, rules, or ordinances, or to recover

1 damages associated with the use of a nonhighway vehicle being operated  
2 in a manner that is in violation of this chapter or of any other noise  
3 laws, rules, or ordinances, is entitled to recover costs and attorneys'  
4 fees pursuant to Title 4 RCW.

5 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.09 RCW  
6 to read as follows:

7 A party who brings an action to enjoin the use of nonhighway  
8 vehicles being operated in a manner that is in violation of RCW  
9 46.09.120(1)(k) or of any other noise laws, rules, or ordinances, or to  
10 recover damages associated with the use of a nonhighway vehicle being  
11 operated in a manner that is in violation of this chapter or of any  
12 other noise laws, rules, or ordinances, is entitled to recover costs  
13 and attorneys' fees pursuant to Title 4 RCW.

14 **Sec. 9.** RCW 70.107.020 and 1974 ex.s. c 183 s 2 are each amended  
15 to read as follows:

16 ~~((As used in))~~ The definitions in this section apply throughout  
17 this chapter~~((7))~~ and rules adopted under this chapter unless the  
18 context clearly ~~((indicates))~~ requires otherwise~~((+))~~.

- 19 (1) "Department" means the department of ecology.
- 20 (2) "Director" means director of the department of ecology.
- 21 (3) "Duration exemption" means the length of time by which a  
22 numeric noise standard may be temporarily exceeded for a specified  
23 purpose.

24 (4) "Local government" means county or city government or any  
25 combination of the two.

26 ~~((+4))~~ (5) "Noise" means the intensity, duration, and character of  
27 sounds from any and all sources.

28 ~~((+5))~~ (6) "Nonhighway vehicle" has the same meaning as provided  
29 in RCW 46.09.020.

30 (7) "Person" means any individual, corporation, partnership,  
31 association, governmental body, state, or other entity whatsoever.

32 (8) "Residential uses" and "residential areas" means any areas with  
33 homes, regardless of the underlying local zoning for the land. The  
34 term includes, but is not limited to, residences on a farm or a forest  
35 parcel, and residences within an area zoned for commercial or

1 industrial uses. If the underlying local zoning for the land is not  
2 residential, then the area considered a residential use includes a one  
3 hundred foot radius around the actual residence.

4 **Sec. 10.** RCW 46.09.020 and 2004 c 105 s 1 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Advisory committee" means the nonhighway and off-road vehicle  
9 activities advisory committee established in RCW 46.09.280.

10 (2) "Committee" means the interagency committee for outdoor  
11 recreation established in RCW 79A.25.110.

12 (3) "Dealer" means a person, partnership, association, or  
13 corporation engaged in the business of selling off-road vehicles at  
14 wholesale or retail in this state.

15 (4) "Department" means the department of licensing.

16 (5) "Highway," for the purpose of this chapter only, means the  
17 entire width between the boundary lines of every roadway publicly  
18 maintained by the state department of transportation or any county or  
19 city with funding from the motor vehicle fund. A highway is generally  
20 capable of travel by a conventional two-wheel drive passenger  
21 automobile during most of the year and in use by such vehicles.

22 (6) "Motorized vehicle" means a vehicle that derives motive power  
23 from an internal combustion engine.

24 (7) "Nonhighway road" means any road owned or managed by a public  
25 agency or any private road for which the owner has granted an easement  
26 for public use for which appropriations from the motor vehicle fund  
27 were not used for (a) original construction or reconstruction in the  
28 last twenty-five years; or (b) maintenance in the last four years.

29 (8) "Nonhighway road recreation facilities" means recreational  
30 facilities that are adjacent to, or accessed by, a nonhighway road and  
31 intended primarily for nonhighway road recreational users.

32 (9) "Nonhighway road recreational user" means a person whose  
33 purpose for consuming fuel on a nonhighway road or off-road is  
34 primarily for nonhighway road recreational purposes, including, but not  
35 limited to, hunting, fishing, camping, sightseeing, wildlife viewing,  
36 picnicking, driving for pleasure, kayaking/canoeing, and gathering  
37 berries, firewood, mushrooms, and other natural products.



1 (10) "Nonhighway vehicle" means any motorized vehicle including an  
2 ORV when used for recreational purposes on nonhighway roads, trails, or  
3 a variety of other natural terrain.

4 Nonhighway vehicle does not include:

5 (a) Any vehicle designed primarily for travel on, over, or in the  
6 water;

7 (b) Snowmobiles or any military vehicles; or

8 (c) Any vehicle eligible for a motor vehicle fuel tax exemption or  
9 rebate under chapter 82.36 RCW while an exemption or rebate is claimed.  
10 This exemption includes but is not limited to farm, construction, and  
11 logging vehicles.

12 (11) "Nonmotorized recreational facilities" means recreational  
13 trails and facilities that are adjacent to, or accessed by, a  
14 nonhighway road and intended primarily for nonmotorized recreational  
15 users.

16 (12) "Nonmotorized recreational user" means a person whose purpose  
17 for consuming fuel on a nonhighway road or off-road is primarily for  
18 nonmotorized recreational purposes including, but not limited to,  
19 walking, hiking, backpacking, climbing, cross-country skiing,  
20 snowshoeing, mountain biking, horseback riding, and pack animal  
21 activities.

22 (13) "Off-road vehicle" or "ORV" means any nonstreet licensed  
23 vehicle when used for recreational purposes on nonhighway roads,  
24 trails, or a variety of other natural terrain. Such vehicles include,  
25 but are not limited to, all-terrain vehicles, motorcycles, four-wheel  
26 drive vehicles, and dune buggies.

27 (14) "Operator" means each person who operates, or is in physical  
28 control of, any nonhighway vehicle.

29 (15) "Organized competitive event" means any competition,  
30 advertised in advance through written notice to organized clubs or  
31 published in local newspapers, sponsored by recognized clubs, and  
32 conducted at a predetermined time and place.

33 (16) "ORV recreation facilities" include, but are not limited to,  
34 ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use  
35 areas, designated for ORV use by the managing authority that are  
36 intended primarily for ORV recreational users.

37 (17) "ORV recreational user" means a person whose purpose for  
38 consuming fuel on nonhighway roads or off-road is primarily for ORV

1 recreational purposes, including but not limited to riding an all-  
2 terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or  
3 dune buggy.

4 (18) "ORV (~~sport[s]~~) sports park" means a facility designed to  
5 accommodate competitive ORV recreational uses including, but not  
6 limited to, motocross racing, four-wheel drive competitions, and flat  
7 track racing. Use of ORV sports parks can be competitive or  
8 noncompetitive in nature.

9 (19) "ORV trail" means a multiple-use corridor designated by the  
10 managing authority and maintained for recreational use by motorized  
11 vehicles.

12 (20) "ORV use permit" means a permit issued for operation of an  
13 off-road vehicle under this chapter.

14 (21) "Owner" means the person other than the lienholder, having an  
15 interest in or title to a nonhighway vehicle, and entitled to the use  
16 or possession thereof.

17 (22) "Person" means any individual, firm, partnership, association,  
18 or corporation.

19 (23) "Residence" has the same meaning as "residential area" in RCW  
20 70.107.020.

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