

# HOUSE BILL REPORT

## HB 1632

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**As Reported by House Committee On:**  
Transportation

**Title:** An act relating to regulating the use of off-road vehicles in certain areas.

**Brief Description:** Regulating the use of off-road vehicles in certain areas.

**Sponsors:** Representatives Shea, Blake, Kristiansen, Sells, Warnick, Upthegrove, Wilcox, Scott, Moscoso, Fagan and Condotta.

**Brief History:**

**Committee Activity:**

Transportation: 2/11/13, 2/28/13 [DPS].

**Brief Summary of Substitute Bill**

- Establishes a definition for "wheeled all-terrain vehicle" along with operator, equipment, and registration requirements and related exemptions.
- Establishes locations in which the wheeled all-terrain vehicle may be operated.
- Establishes documentation for required equipment installations for a wheeled all-terrain vehicle.
- Creates the Multiuse Roadway Safety Account.
- Clarifies that local land management requirements must be followed and a process for the operator to receive a citation with or without law enforcement presence.
- Clarifies when off-road vehicle (ORV) registrations and decals are not required for ORVs.
- Increases the age of a person from 13 to 16 years of age that may operate an ORV on or across a highway or non-highway road.
- Adds definitions for "primitive road" to the definitions of a non-highway road, direct supervision, and emergency management.
- Designates that a county by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Clibborn, Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Angel, Farrell, Fitzgibbon, Hayes, Johnson, Kochmar, Kretz, Kristiansen, Moeller, Morris, O'Ban, Riccelli, Rodne, Sells, Shea, Upthegrove and Zeiger.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Fey, Vice Chair; Lias, Vice Chair; Bergquist, Habib, Klippert, Ryu, Takko and Tarleton.

**Staff:** Jerry Long (786-7306).

### **Background:**

Off-road vehicles (ORV) are labeled by the manufacturer's statement or certificate of origin as intended for "off-road use." Off-road vehicles must display a current ORV tag that is purchased for \$18. The Department of Licensing (DOL) issues the registrations and temporary-use permits for ORVs and issues the ORV decals for a fee that covers the actual cost of the decal. The DOL retains enough money to cover expenses incurred in the administration of the ORV fee and the remaining funds are distributed for off-road recreational facilities.

Any out-of-state operator of an ORV must have their ORV registered in the state that they are a resident of or obtain a temporary ORV-use permit. The operator must be 13 years old to operate. Persons under 13 years old may operate the ORV under the direct supervision of a person 18 years or older who possesses a valid driver's license.

It is lawful to operate an ORV on a non-highway road if the state, federal, local, or private authority responsible for the management of the non-highway road authorizes the use of ORVs on that road.

If a person operating an ORV is in violation of one of the operator behavior or equipment requirement items listed in the ORV statutes, the fine is a traffic infraction. These infractions are treated as any other motor vehicle traffic infraction.

A person may operate, with a valid driver's license and a motorcycle endorsement, an off-road motorcycle (does not include wheeled all-terrain vehicles) upon a public road, street, or highway in Washington, if the person complies with the following requirements:

- files a motorcycle-use declaration, in which the DOL certifies conformance with all applicable federal motor vehicle safety standards and state standards;
- obtains and has in full force and effect a current and proper ORV registration or temporary ORV-use permit;
- obtains a valid driver's license and motorcycle endorsement issued to Washington residents; and
- installs various outlined motorcycle components, if not already present on the off-road motorcycle, which includes a head lamp, a tail lamp, reflectors, brakes, a mirror

on both the left and right-handle bars, a windshield unless the operator is wearing eye protection, a horn or warning device, turn signals, tires, and fenders.

The off-road motorcycle must be inspected by a Washington motorcycle repair shop or motorcycle dealer and certified by the dealer that the off-road motorcycle meets the equipment requirements.

The owner of the off-road motorcycle must sign a release that releases the State of Washington from any liability.

Currently any city, county, or other political subdivision of the State of Washington, or any state agency, may regulate the operation of non-highway vehicles on public lands, waters, and other properties under its jurisdiction; and on streets, roads, or highways within its boundaries by adopting regulations or ordinances, provided such regulations are not less stringent than the provisions of state laws.

A legislative body of a city with a population of less than 3,000 in population, may by ordinance, designate a street or highway within its boundaries to be suitable for use by ORVs. The legislative body of a county may, by ordinance, designate a road or highway within its boundaries to be suitable for use by ORVs if the road or highway is a direct connection between a city with a population of less than 3,000 and an ORV recreation facility.

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### **Summary of Substitute Bill:**

The substitute bill establishes a definition for a "wheeled all-terrain vehicle" which is:

- a non-highway vehicle with handlebars that are 50 inches or less in width; has a seat height of at least 20 inches; weighs less than 1,500 pounds; and has four tires having a diameter of 30 inches or less; or
- a utility-type vehicle designed for, and capable of travel over, designated roads with four or more low pressure tires of 20 pounds per square inch (PSI) or less, a maximum width of less than 74 inches, a maximum weight less than 2,000 pounds, a wheelbase of 110 inches or less, and that meets at least one of the following: a minimum width of 50 inches; a minimum weight of 900 pounds; or a wheelbase of over 61 inches.

Wheeled all-terrain vehicles operated in the state must display a metal tag on the rear of the vehicle. The initial metal tag must be issued with an original ORV registration. The metal tag must be replaced every seven years at a cost of \$2 to be deposited into the Nonhighway and Off-Road Vehicle Activities Program Account (NOVA Account). The DOL must design the metal tag and it must be the same size as a motorcycle license plate and have "Restricted Vehicle" at the top. On the bottom left of the tag will be space for an off-road tab and on the bottom right space for an on-road tab. The operator must have a current ORV registration tab and, in addition, may have an on-road vehicle tab and pay the annual vehicle license fee for the off-road or both off-road and on-road tabs. The substitute bill requires that the on-road tab must be a bright color and can be seen from a reasonable distance. The initial and renewal on-road registration fee is \$12 and is deposited into the Multiuse Roadway Safety

Account (Multiuse Account). A wheeled all-terrain vehicle may not be registered for commercial use. Local authorities may not establish registration requirements for these vehicles.

A person that violates the following areas of operation will commit a traffic infraction. A person may operate a wheeled all-terrain vehicle:

- upon any public roadway of this state having a speed limit of 35 miles per hour or less if approved by opt-in or opt-out provisions below;
- upon a road or highway road or highway in a city, town, or county with a population of less than 15,000 unless the city, town, or county by ordinance, designates a road or highway to be unsuitable for wheeled all-terrain vehicle use; or
- upon a public roadway, trail, non-highway road, or state highway while being used for emergency management or search and rescue.

A city, town, or county must post those roads not suitable for wheeled all-terrain vehicle use publically on the main page of the city's or town's website.

A person may not operate a wheeled all-terrain vehicle:

- on state highways, except on a segment that is within the limits of a city or town and the speed limit is 35 miles per hour or less;
- crossing a public roadway in excess of 35 miles per hour unless the crossing begins and ends on a public roadway with a speed limit of 35 miles per hour or less and the intersection is 90 degrees;
- crossing at an uncontrolled intersection of a state highway; and
- on a public roadway in a city, town, or county with a population of 15,000 or more unless the city, town, or county by ordinance, has approved the vehicles on city roadways.

The substitute bill states that the opt-in or out-for cities, towns, or counties does not affect any roadway that was designated as open or closed as of January 1, 2013.

A wheeled all-terrain vehicle is an ORV for purposes of recreation immunity.

The operator of a wheeled all-terrain vehicle upon a public roadway of the state must have a valid Washington driver's license or a license issued by the state of the person's residence. The operator must follow the rights and duties of a motorcycle, except that the vehicles may not be operated side-by-side in a single lane.

A wheeled all-terrain vehicle must have the following equipment: headlights, one tail lamp for a wheeled all-terrain vehicle and two for a utility-type vehicle; a stop light; reflectors; turn signals during darkness; one handlebar mirror or two if a utility-type vehicle; a windshield unless the operator has eye protection; a horn or warning device; brakes; a spark arrester and muffler; and seatbelts if a utility-type vehicle.

A person operating a wheeled all-terrain vehicle, not including emergency services or vehicles used in the production of agriculture and timber on a public roadway, must provide a declaration that includes:

- documentation of a safety inspection to be completed by a licensed wheeled all-terrain vehicle dealer or repair shop in Washington and certified under oath that the equipment as required meets state and federal law. A person making a false statement regarding the inspection is guilty of false swearing, a gross misdemeanor;
- documentation that the dealer or repair shop did not charge more than \$50 per inspection;
- a statement that the dealer or repair shop is entitled to the full amount charged;
- a vehicle identification number verification; and
- a release signed by the owner of the wheeled all-terrain vehicle that releases the state from any liability.

The DOL must track wheeled all-terrain vehicles in a separate registration category for reporting purposes.

The substitute bill creates the Multiuse Account. Receipts from the new on-road use registration fee of \$12 must be deposited into the Multiuse Account and only be spent after appropriation. The Washington State Department of Transportation will administer a grant program for:

- counties to perform engineering analysis of mixed-vehicle use on county roads;
- local governments to erect signs providing notice that wheeled all-terrain vehicles are present or crossing roadways;
- law enforcement for defraying costs due to wheeled all-terrain vehicles; or
- law enforcement to investigate accidents involving wheeled all-terrain vehicles.

Grants must be prioritized first by marking highway crossings warning motorists that wheeled all-terrain vehicles may be crossing when a recreation parking lot is on the other side of a roadway from the actual recreation facility. Signs must conform to the Manual on Uniform Traffic Control Devices. The Account will retain investment earnings.

A person who operates a wheeled all-terrain vehicle upon public lands must follow local land-management requirements. If the person is found in violation, it is a traffic infraction with a penalty of up to \$500 by any law enforcement officer. If the infraction was not committed in the officer's presence, as long as there is reasonable evidence after an investigation of the violation and probable cause, then the officer must prepare a ticket of infraction and serve it upon the operator of the wheeled all-terrain vehicle. At a minimum, the evidence must include the time, location, and metal tag number or vehicle description.

The ORV registrations and decals are not required for ORVs:

- operated on and across agricultural and timber lands owned or leased, or managed by the ORV owner or operator or owner's employer;
- when used for emergency management under the authority or direction of an agency that engages in emergency management or search and rescue; or
- when used by persons who, in good faith, render emergency care or assistance with respect to an incident involving ORVs and will not be liable for civil damages resulting from rendering assistance, other than acts of omissions constituting gross negligence or willful or misconduct.

The substitute bill designates that a county by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs. This provision does not apply to wheeled all-terrain vehicles.

The substitute bill adds to existing authorizations that it is lawful to operate an ORV on any trail, non-highway road, or highway while being used under the authority or direction of an agency that engages in emergency management, search and rescue, or law enforcement official duties.

The substitute bill increases the age of a person from 13 years to 16 years of age that may operate an ORV on or across a highway or non-highway road. This does not apply when the person is under 16 and the vehicle is being used for emergency management, or rendering emergency care or assistance with respect to an incident involving ORVs. A person may also operate an ORV across a highway, if at that crossing, signs indicate that wheeled all-terrain vehicles may be crossing, or on a non-highway road or trail designated for the ORV use under the direct supervision of a person that is at least 18 years old with a valid driver's license. The age restriction does not apply to vehicles used in the production of agricultural or timber products on and across lands owned, leased, or managed by the owner or operator of a wheeled all-terrain vehicle or the operator's employer.

The substitute bill changes the existing exemption for a person not having to wear a motorcycle helmet when operating on agricultural lands to "production of agricultural and timber products on and across lands owned or leased, or managed by the owner or operator of the ORV or the operator's employer."

The substitute bill expands the use of existing ORV funds to publicly owned lands that came into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

The substitute bill adds definitions for:

- "primitive road" to the definition of a non-highway road;
- direct supervision; and
- emergency management.

### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- clarifies that the revenue from the ORV registration must be deposited into the NOVA Account;
- requires that the on-road tab must be a bright color that can be seen from a reasonable distance;
- clarifies that a wheeled all-terrain vehicle is an ORV for purposes of recreation immunity;
- adds towns, in addition to cities and counties, that can by ordinance designate roadways or highways suitable or unsuitable for use by wheeled all-terrain vehicles and ORVs;
- modifies the definition of "emergency management;"

- modifies the definition of direct supervision of an unlicensed operator from "within 300 feet" to "within 150 feet;"
  - states that the opt-in or opt-out for cities, towns, or counties does not affect any roadway that was designated as open or closed as of January 1, 2013;
  - clarifies that any public roadways, including non-highway roads and trails authorized by a city, town, or county suitable for use by wheeled all-terrain vehicles be listed publically on their website;
  - clarifies for the uses and violation section the actual statutes that a person would need to violate to receive a traffic infraction of \$500;
  - designates that a county or town, in addition to a city, by ordinance may designate a road or highway within its boundaries to be suitable for use by ORVs. This provision does not apply to wheeled all-terrain vehicles; and
  - changes the effective date from March 1, 2014, to an emergency clause to take effect on July 1, 2013.
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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 5, 2013.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect on July 1, 2013.

**Staff Summary of Public Testimony:**

(In support) The bill brings balance between protecting the environment, providing increased opportunities for all-terrain vehicle (ATV) usage, and promoting responsible ORV riding. A group of very dedicated people, from several interest groups, have devoted many hours to work together on this bill. There is a lot of confusion of where you can and cannot ride an ORV. This will enable our disabled veterans, disabled citizens, and older people to enjoy Washington. The metal tag concept is designed after Idaho's metal tag. The bill exempts timber and agriculture producers from the required equipment and operator requirements. The bill closes the gap by increasing the age from age 13 to 16 to operate an ORV without supervision, to line up with the age of 16 for a driver's license in the state. The bill clarifies the \$18 ORV fee still is deposited into the NOVA Account.

The on-road tab must be a bright color so that it can be seen from a reasonable distance. Cities, towns, and counties have options for opting in or out or designating roads as unsuitable for use by wheeled all-terrain vehicles.

This bill increases the ability for Washington to attract tourism dollars into the state. Since Reeder has been closed, there has been a drop of 55 percent in business in the surrounding area. There are very few ways to raise revenue for the state; this would raise revenues. By not having regulations that promote this type of activity, the existing regulations are sending dollars out of the state. People are not using their ATVs in Washington, but are using them in other states like Idaho and Oregon. In the future, there will be the opportunity for electric

ATVs. These vehicles would only be allowed on roadways with a speed limit of under 35 miles per hour. This would be of great economic value to the City of Sultan.

The state ATV organization is in support of the bill and many people have been working on this issue for a long time. All parts of the bill have been discussed. Washington is losing tourist dollars and, if you talk with Idaho law enforcement, there have been very few ATV issues in Idaho. The Washington State Patrol would like additional equipment requirements for wheeled all-terrain vehicles.

Some day, it would be nice to have some of the non-highway roads opened up, many have been closed to ORVs for 40 years. The bill is very strict on the required equipment and requires a shop to inspect and certify that the equipment is within state and federal laws. The ORV users want to be safe.

It is appreciated that the bill does not include farms and there are no impacts to farmers.

In November all of the stakeholders were brought together to work on the bill. The bill increases ATV use, but also protects the environment. This bill creates something that benefits all stakeholders. The bill protects the backwoods, offering greater protection for those areas. If there is a problem, it provides time to investigate the problem. The metal tag provides a way to identify ATV operators that create damage and do not follow the rules. There has been lots of damage and abuse, but this will help people to use the land responsibly.

Dirt bikes with the required equipment and that are appropriately registered are already authorized to ride on roadways due to Senate Bill 5800.

(Neutral) The state has 2.1 million acres. This is one of the benefits of living in this state. Unless an ORV has an ORV permit, then the ORV owner would need to have a Discover Pass to use the non-highway roads and trails in the state parks. If the ORV is for Search and Rescue, then no pass or ORV permit is required.

(With concerns) Counties have a concern with the opt-in and opt-out provisions.

(Opposed) The Washington State Patrol (WSP) appreciates the efforts of everybody, but it is very concerned, especially in regards to public safety. These vehicles are designed for off-road use only and do not have the equipment to be used for on-road use. Entrances coming onto a roadway may not be a formal entrance which puts the ATV operator and motorists at risk. There need to be signs at crossings. Many of the persons operating an ORV are unlicensed and untrained individuals. There are issues with the safety equipment and the fact that wheeled all-terrain vehicles will need two tail and brake lights due to being a wider vehicle. The agriculture and timber provisions are unclear.

It is necessary to have the operators trained on a wheeled all-terrain vehicle and have an endorsement. The operators need to know how the vehicle is going to react under certain conditions. There needs to be discussion on the definitions in the bill. This concept could expand to other vehicles like electric vehicles and other gas-related non-highway vehicles.

The Transportation Safety Commission has safety concerns with wheeled all-terrain vehicles being used on the roadways. One area the state has not seen a decrease in is motorcycle deaths. There is a chart and table that shows most accidents on motorcycles occur at low speeds. For ORVs there are four to five deaths per year.

The DOL recommends having a wheeled all-terrain endorsement on the driver's license. These vehicles are designated for on-road use and further conversation would be appreciated regarding House Bill 1632.

**Persons Testifying:** (In support) Representative Shea, prime sponsor; Linda Driscoll, Premier Polaris; Kenneth Walker, City of Sultan; Ken Irish; Ted Jackson; Gary Johnson, Gifford Pinchot Off Highway Vehicle Alliance; Patti Case, Green Diamond Resource Company; Tom Davis, Washington Farm Bureau; Gregg Bafundo, Trout Unlimited; Tisha Kennell, Back Country Hunters and Anglers; Mitch Freedman, Conservation Northwest; and Gary Prewitt, Eastern Washington All Terrain Vehicle Association.

(Neutral) Mark Mauran, Department of Natural Resources; and Susan Kavanaugh, Washington State Parks.

(With concerns) Gary Rowe, Washington State Association of Counties.

(Opposed) Steve Lind, Washington Traffic Safety Commission; Tony Simonti, Department of Licensing; and Rob Huss, Washington State Patrol.

**Persons Signed In To Testify But Not Testifying:** None.