

# HOUSE BILL REPORT

## ESHB 1632

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### As Passed Legislature

**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:** House Committee on Transportation (originally sponsored by 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].

##### **Floor Activity:**

Passed House: 6/28/13, 81-11.

Passed Senate: 6/29/13, 39-5.

Passed Legislature.

#### **Brief Summary of Engrossed 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.
- Implements new tag and tab requirements for wheeled all-terrain vehicles.
- Establishes documentation for required equipment installations for a wheeled all-terrain vehicle.
- Established operator requirements for wheeled all-terrain vehicles.
- Creates the Multiuse Roadway Safety Account.
- Clarifies that local land management requirements must be followed and implements 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.

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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.*

- 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.
- Designates that a city or town with less than 3,000 in population may, by ordinance, designate a road or highway to be suitable for use by ORVs.

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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; Liias, 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." The ORVs 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 (not including 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 include a head lamp, a tail lamp, reflectors, brakes, a mirror on both the left and right handlebars, 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 who must certify that it meets the equipment requirements.

The owner of the off-road motorcycle must sign a release that releases 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.

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

#### Wheeled All-terrain Vehicles.

The bill provides an intent statement to standardize ORV rules, open up certain roadways to wheeled all-terrain vehicles, and stimulate economic activity.

The bill provides definitions for "primitive road", "direct supervision", "emergency management", and "wheeled all-terrain vehicle".

The bill provides rules regarding the registration of wheeled all-terrain vehicles as follows. *Every* wheeled all-terrain vehicle operated within this state unless exempt must obtain a metal tag from the DOL for \$18 and display that metal tag on the rear of the vehicle along with an off-road tab in the bottom left corner. For wheeled all-terrain vehicles *operated upon public roadways*, the operator must also have a proper vehicle registration, pay the annual license fee of \$30, and display a bright colored decal in the bottom right corner of the tag

indicating the vehicle is road legal. For wheeled all-terrain vehicles *operated off-road only*, the operator must have a proper ORV registration (\$18) or temporary use permit.

Cost Breakdown:

Every wheeled all-terrain vehicle must pay a one-time cost of \$18 for the metal tag plus:

- The annual cost to operate off-road of \$18 for registration or \$10.75 for a temporary use permit. The revenue is deposited into the Non-highway and Off-road Vehicle Activities Program Account.
- The annual cost to operate on public roadways, which is \$12 for a "road legal decal" plus an \$18 licensing fee, equaling \$30. The \$12 is deposited to the Multiuse Roadway Safety Account, created under section 10 and the \$18 is deposited to the Non-highway and Off-road Vehicle Activities Program Account.
- The metal tag must be replaced every seven years at a cost of \$2 and the revenue is deposited into the Non-highway and Off-road Vehicle Activities Program Account.

The bill directs the DOL to design the metal tag and be the same size as a motorcycle license plate.

The bill restricts a wheeled all-terrain vehicle from being used for commercial use.

The bill requires a person to have a valid driver's license to operate a wheeled all-terrain vehicle on a public roadway. A person who operates a wheeled all-terrain vehicle must follow the motorcycle rules except that wheeled all-terrain vehicles cannot be operated side by side in a single lane of traffic.

A violation of this section is a traffic infraction.

The DOL may develop and implement, along with rules, an online training course for people that register wheeled all-terrain and utility type vehicles for use on a public roadway.

Any future costs associated with the training course must be appropriated from the Highway Safety Account and any fees collected must be deposited to the Highway Safety Account.

The bill provides that the public roadways a wheeled all-terrain vehicle may operate upon include public roadways of the state, not including non-highway roads and trails:

The bill authorizes wheeled all-terrain vehicles to operate on a public roadway, not including non highway roads and trails, under the following conditions:

- in a county with a population of 15,000 or more if the county by ordinance has approved the operation of wheeled all-terrain vehicles on the county roadways;
- in a county with less than 15,000 in population unless the county has designated roadways or highways within its boundaries to be unsuitable for use by wheeled all-terrain vehicles; and
- in a city or town providing that the city or town by ordinance has approved the operation of wheeled all-terrain vehicles on city or town roadways.

- This section does not affect any roadway designated as open or closed as of January 1, 2013.

City, town or county roadways authorized or deemed unsuitable for use by wheeled all-terrain vehicles must be listed publicly and accessible from the county, city or town's webpage.

Any person who operates on a public roadway in violation of the rules above commits a traffic infraction. Accidents must be recorded and tracked in a separate category.

Local authorities may not establish additional requirements for registration of wheeled all-terrain vehicles.

A person may operate a wheeled all-terrain vehicle on a public roadway, trail, non-highway road or highway in the state while being used under the authority of direction of an appropriate agency that engages in emergency management.

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

The bill provides equipment requirements for a wheeled all-terrain vehicle including: (1) headlights; (2) a one tail lamp, except that utility-type vehicles must have two tail lamps; (3) a stop lamp; (4) reflectors; (5) turn signals if operating during hours of darkness; (6) a mirror attached to either the right or left handlebar, except that a utility-type vehicle must have two mirrors; (7) a windshield (unless the operator is wearing eye protection); (8) a horn or warning device; (9) brakes in working order; (10) a spark arrestor and muffler; and (11) seatbelts for utility-type vehicles. The equipment requirements do not apply to emergency service vehicles or vehicles used for agricultural or timber products.

A person who operates a wheeled all-terrain vehicle upon a roadway must provide a declaration that includes the following:

- Documentation of a safety inspection to be completed by a licensed wheeled all-terrain vehicle dealer or repair shop certified under oath that all wheeled all-terrain vehicle required equipment is installed. A false statement will commit a gross misdemeanor.
- Documentation that the dealer or repair shop did not charge more than \$50 for the inspection.
- A signed release that releases Washington from any liability.

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

A person who operates a wheeled all-terrain vehicle in violation of operating rules or inconsistent with the emergency exemption is subject to a traffic infraction.

Any law enforcement officer may issue a traffic infraction whether or not the infraction was committed in the officer's presence, as long as there is reasonable evidence that the operator committed a violation.

The bill creates the Multi-Use Roadway Safety Account and provides that the \$30 registration fee for wheeled all-terrain vehicles used on public roadways must be deposited into this account. Funds from this account may be spent on: (1) safety engineering analysis; (2) signs to alert the motoring public that wheeled all-terrain vehicles may be present or crossing; or (3) law enforcement for purposes of defraying costs of enforcement involving wheeled all-terrain vehicles.

#### Off-road Vehicles.

The bill modifies rules regarding the operation of ORVs on public roads and clarifies that a wheeled all-terrain vehicle is not an ORV for purposes of this section.

The bill directs the DOL to issue metal tags and registrations for wheeled all-terrain vehicles.

The bill clarifies that the existing ORV registration does not apply to wheeled all-terrain vehicles registered for use on a public roadway.

The bill provides that the following vehicles are exempt from ORV registration and decal requirements: (1) ORVs operated on and across agricultural and timber lands; (2) ORVs used for emergency management; and (3) ORVs operated by persons rendering emergency assistance.

The bill provides that an ORV may operate on any trail, non-highway road, or highway while under the direction of emergency management, search and rescue, or law enforcement, within the scope of their official duties.

No person under 16 years of age may operate an ORV on or across a highway or non-highway road in this state without direct supervision of a person 18 years or older possessing a valid driver license. This restriction does not apply to emergency management or while rendering emergency assistance. Persons under 16 years of age may operate an ORV across a highway if, at the crossing, signs indicate that wheeled all-terrain vehicles or ORVs may be crossing. This section 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.

Exempts ORV operators from the helmet requirement when used in the production of agricultural and timber products on and across lands owned, leased, or managed by the owner or operator's employer.

Expands the use of the funds collected for off-road vehicle registrations to include publically owned lands.

#### Administrative.

The bill establishes the \$12 initial and renewal fees for on-road use along with placing the \$18 ORV fee for initial and renewal in the vehicle registration fee statutes.

The bill exempts a wheeled all-terrain vehicle from the requirement to obtain motor vehicle liability insurance.

The bill codifies the gross misdemeanor in reference to a false statement in the equipment certification or declaration process.

The bill clarifies that the definition of a motor vehicle does not include wheeled all-terrain vehicles for purposes of regulating access to recreational lands.

The bill provides that the Multi-Use Roadway Safety Account is entitled to its investment earnings. Both sections reference the same statute, but are necessary because of contingent effective dates.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 28, 2013, except for section 3, which takes effect July 1, 2015, and section 25, which takes effect if the requirements set out in section 7, Chapter 36, Laws of 2012 are met.

**Staff Summary of Public Testimony:**

(In support) The bill brings balance between protecting the environment, providing increased opportunities for all-terrain vehicle 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 all-terrain vehicles in Washington, but are using them in other states like Idaho and Oregon. In the future, there will be the opportunity for electric all-terrain vehicles. 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 all-terrain vehicle 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

all-terrain vehicle issues in Idaho. The Washington State Patrol (WSP) 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 all-terrain vehicle 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 all-terrain vehicle 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, 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 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 all-terrain vehicle 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 is in 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.