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SENATE BILL 5128

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State of Washington

61st Legislature

2009 Regular Session

By Senators Jacobsen and Kline

Read first time 01/14/09. Referred to Committee on Natural Resources,  
Ocean & Recreation.

1 AN ACT Relating to addressing natural resource impacts from  
2 off-road vehicle use; amending RCW 46.09.117, 4.24.210, 46.09.120, and  
3 46.09.200; reenacting and amending RCW 46.09.170; and creating a new  
4 section.

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

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

12 ORV damage typically involves soil disturbance, erosion, or  
13 rutting, but may also include damage to vegetation or other property.  
14 Stream banks and lakeshores are especially sensitive areas and easily  
15 susceptible to damage. In turn, these riparian areas provide water,  
16 food, and shelter to wildlife.

17 Therefore, the legislature intends to take steps to minimize  
18 further damage to public and private natural resource lands caused by

1 unauthorized ORV use while also continuing to maximize outdoor  
2 recreation opportunities.

3 **Sec. 2.** RCW 46.09.117 and 2005 c 213 s 5 are each amended to read  
4 as follows:

5 (1) Except as specified in subsection (2) of this section, no  
6 person under (~~(thirteen))~~ eighteen years of age may operate an off-road  
7 vehicle on or across a highway or nonhighway road in this state without  
8 a valid license to operate a motor vehicle issued under chapter 46.20  
9 RCW.

10 (2) Persons (~~(under thirteen years of age))~~) may operate an off-road  
11 vehicle on a nonhighway road designated for off-road vehicle use under  
12 the direct supervision of a person eighteen years of age or older  
13 possessing a valid license to operate a motor vehicle under chapter  
14 46.20 RCW.

15 **Sec. 3.** RCW 4.24.210 and 2006 c 212 s 6 are each amended to read  
16 as follows:

17 (1) Except as otherwise provided in subsection (3) or (4) of this  
18 section, any public or private landowners or others in lawful  
19 possession and control of any lands whether designated resource, rural,  
20 or urban, or water areas or channels and lands adjacent to such areas  
21 or channels, who allow members of the public to use them for the  
22 purposes of outdoor recreation, which term includes, but is not limited  
23 to, the cutting, gathering, and removing of firewood by private persons  
24 for their personal use without purchasing the firewood from the  
25 landowner, hunting, fishing, camping, picnicking, swimming, hiking,  
26 bicycling, skateboarding or other nonmotorized wheel-based activities,  
27 hanggliding, paragliding, rock climbing, the riding of horses or other  
28 animals, clam digging, pleasure driving of off-road vehicles,  
29 snowmobiles, and other vehicles, boating, nature study, winter or water  
30 sports, viewing or enjoying historical, archaeological, scenic, or  
31 scientific sites, without charging a fee of any kind therefor, shall  
32 not be liable for unintentional injuries to such users.

33 (2) Except as otherwise provided in subsection (3) or (4) of this  
34 section, any public or private landowner or others in lawful possession  
35 and control of any lands whether rural or urban, or water areas or  
36 channels and lands adjacent to such areas or channels, who offer or

1 allow such land to be used for purposes of a fish or wildlife  
2 cooperative project, or allow access to such land for cleanup of litter  
3 or other solid waste, shall not be liable for unintentional injuries to  
4 any volunteer group or to any other users.

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

9 (4)(a) Nothing in this section shall prevent the liability of a  
10 landowner or others in lawful possession and control for injuries  
11 sustained to users by reason of a known dangerous artificial latent  
12 condition for which warning signs have not been conspicuously posted.

13 (i) A fixed anchor used in rock climbing and put in place by  
14 someone other than a landowner is not a known dangerous artificial  
15 latent condition and a landowner under subsection (1) of this section  
16 shall not be liable for unintentional injuries resulting from the  
17 condition or use of such an anchor.

18 (ii) A public or private landowner under subsection (1) of this  
19 section shall not be liable for unintentional injuries resulting from  
20 the condition or use of the land where a person is injured while  
21 operating an off-road vehicle without landowner authorization or  
22 outside of authorized off-road vehicle use areas.

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

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

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

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

31 (b) A daily charge not to exceed twenty dollars per person, per  
32 day, for access to a publicly owned ORV sports park, as defined in RCW  
33 46.09.020, or other public facility accessed by a highway, street, or  
34 nonhighway road for the purposes of off-road vehicle use.

35 **Sec. 4.** RCW 46.09.170 and 2007 c 522 s 953 and 2007 c 241 s 16 are  
36 each reenacted and amended to read as follows:

37 (1) From time to time, but at least once each year, the state

1 treasurer shall refund from the motor vehicle fund one percent of the  
2 motor vehicle fuel tax revenues collected under chapter 82.36 RCW,  
3 based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle  
4 fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per  
5 gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007;  
6 (c) twenty-one cents per gallon of motor vehicle fuel from July 1,  
7 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor  
8 vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-  
9 three cents per gallon of motor vehicle fuel beginning July 1, 2011,  
10 and thereafter, less proper deductions for refunds and costs of  
11 collection as provided in RCW 46.68.090.

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

14 (a) Thirty-six percent shall be credited to the ORV and nonhighway  
15 vehicle account and administered by the department of natural resources  
16 solely for acquisition, planning, development, maintenance, and  
17 management of ORV, nonmotorized, and nonhighway road recreation  
18 facilities, and information programs and maintenance of nonhighway  
19 roads;

20 (b) Three and one-half percent shall be credited to the ORV and  
21 nonhighway vehicle account and administered by the department of fish  
22 and wildlife solely for the acquisition, planning, development,  
23 maintenance, and management of ORV, nonmotorized, and nonhighway road  
24 recreation facilities and the maintenance of nonhighway roads;

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

29 (d) Fifty-eight and one-half percent shall be credited to the  
30 nonhighway and off-road vehicle activities program account to be  
31 administered by the board for planning, acquisition, development,  
32 maintenance, and management of ORV, nonmotorized, and nonhighway road  
33 recreation facilities and for education, information, and law  
34 enforcement programs. The funds under this subsection shall be  
35 expended in accordance with the following limitations:

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

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

4 (A) Not less than thirty percent, together with the funds the board  
5 receives under RCW 46.09.110, may be expended for ORV recreation  
6 facilities. Prior to expending funds for ORV recreation facilities,  
7 the board must accept applications and fund appropriate projects  
8 submitted by the department of natural resources, the department of  
9 fish and wildlife, and the parks and recreation commission to repair or  
10 mitigate for soil erosion or damage to trees, crops, riparian areas, or  
11 other vegetation resulting from off-road vehicle use on lands managed  
12 by these agencies;

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

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

19 (iii) The board may waive the minimum percentage cited in (d)(ii)  
20 of this subsection due to insufficient requests for funds or projects  
21 that score low in the board's project evaluation. Funds remaining  
22 after such a waiver must be allocated in accordance with board policy.

23 (3) On a yearly basis an agency may not, except as provided in RCW  
24 46.09.110, expend more than ten percent of the funds it receives under  
25 this chapter for general administration expenses incurred in carrying  
26 out this chapter.

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

35 **Sec. 5.** RCW 46.09.120 and 2006 c 212 s 3 are each amended to read  
36 as follows:

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

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

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

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

11 (d) Without a spark arrester approved by the department of natural  
12 resources;

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

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

23 (ii) With the vehicle stationary and the engine running at a steady  
24 speed equal to one-half of the manufacturer's maximum allowable ("red  
25 line") engine speed or where the manufacturer's maximum allowable  
26 engine speed is not known the test speed in revolutions per minute  
27 calculated as sixty percent of the speed at which maximum horsepower is  
28 developed; and

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

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

36 ~~(g) ((On lands not owned by the operator or owner of the nonhighway  
37 vehicle in any area or in such a manner so as to unreasonably expose~~

1 ~~the underlying soil, or to create an erosion condition, or to injure,~~  
2 ~~damage, or destroy trees, growing crops, or other vegetation;~~

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

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

8 ~~((j))~~ (i) On a private nonhighway road in violation of RCW  
9 46.09.115(3).

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

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

13 (b) Operate any nonhighway vehicle on lands not owned by the  
14 operator or owner of the nonhighway vehicle in any area that has not  
15 been authorized for nonhighway vehicle use in such a manner so as to  
16 unreasonably expose the underlying soil; create an erosion condition;  
17 or injure, damage, or destroy trees, growing crops, or other  
18 vegetation.

19 (3)(a) Except for an off-road vehicle equipped with seat belts and  
20 roll bars or an enclosed passenger compartment, it is a traffic  
21 infraction for any person to operate or ride an off-road vehicle on a  
22 nonhighway road without wearing upon his or her head a motorcycle  
23 helmet fastened securely while in motion. For purposes of this  
24 section, "motorcycle helmet" has the same meaning as provided in RCW  
25 46.37.530.

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

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

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

33 **Sec. 6.** RCW 46.09.200 and 2001 c 253 s 3 are each amended to read  
34 as follows:

35 (1) The provisions of this chapter shall be enforced by all persons  
36 having the authority to enforce any of the laws of this state,  
37 including, without limitation, officers of the state patrol, county

1 sheriffs and their deputies, all municipal law enforcement officers  
2 within their respective jurisdictions, fish and wildlife officers,  
3 state park rangers, and those employees of the department of natural  
4 resources designated by the commissioner of public lands under RCW  
5 (~~43.30.310~~) 43.12.065, 76.04.035, and 76.04.045.

6 (2)(a) A nonhighway vehicle under operation during a violation of  
7 RCW 46.09.120(2)(b) is subject to seizure and forfeiture and no  
8 property right exists in it.

9 (b) A nonhighway vehicle may be seized by any law enforcement  
10 officer of this state upon process issued by any court having  
11 jurisdiction over the property. Whenever any law enforcement officer  
12 authorized to enforce this chapter has probable cause to believe that  
13 a person is operating any nonhighway vehicle in violation of RCW  
14 46.09.120(1)(g), the officer may seize the nonhighway vehicle without  
15 process.

16 (c) Proceedings for forfeiture shall be deemed commenced by the  
17 seizure. The law enforcement agency under whose authority the seizure  
18 was made shall cause notice to be served within fifteen days following  
19 the seizure on the owner of the property seized and the person in  
20 charge thereof and any person having any known right or interest  
21 therein, including any community property interest, of the seizure and  
22 intended forfeiture of the seized property. The notice of seizure may  
23 be served by any method authorized by law or court rule including but  
24 not limited to service by certified mail with return receipt requested.  
25 Service by mail shall be deemed complete upon mailing within the  
26 fifteen-day period following the seizure.

27 (d) If no person notifies the seizing law enforcement agency in  
28 writing of the person's claim of ownership or right to possession of  
29 items specified in (a) of this subsection within forty-five days of the  
30 seizure, the item seized shall be deemed forfeited.

31 (e) If a person notifies the seizing law enforcement agency in  
32 writing of the person's claim of ownership or right to possession of  
33 the seized property within forty-five days of the seizure, the law  
34 enforcement agency shall give the person or persons a reasonable  
35 opportunity to be heard as to the claim or right. The hearing shall be  
36 before the chief law enforcement officer of the seizing agency or the  
37 chief law enforcement officer's designee, except where the seizing  
38 agency is a state agency as defined in RCW 34.12.020(4), the hearing



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

24 (f) When property is forfeited under this chapter, the seizing law  
25 enforcement agency may:

26 (i) Retain it for official use or upon application by any law  
27 enforcement agency of this state release such property to such agency  
28 for the exclusive use for law enforcement purposes; or

29 (ii) Sell the property and use moneys received exclusively for the  
30 expansion and improvement of law enforcement activity. Money retained  
31 under this section may not be used to supplant preexisting funding  
32 sources.

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