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SENATE BILL 5845

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Morton, King, and Roach

Read first time 02/22/11. Referred to Committee on Transportation.

1 AN ACT Relating to off-road vehicles; amending RCW 46.09.310,  
2 46.09.360, 46.09.420, 46.09.450, 46.09.460, 46.09.510, 46.09.530, and  
3 46.30.020; reenacting and amending RCW 46.09.520; creating a new  
4 section; providing an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that off-road vehicle  
7 users have been overwhelmed with varied confusing rules, regulations,  
8 and ordinances from federal, state, county, and city land managers  
9 throughout the state to the extent standardization statewide is needed  
10 to maintain public safety and good order.

11 **Sec. 2.** RCW 46.09.310 and 2010 c 161 s 213 are each amended to  
12 read as follows:

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1) "Advisory committee" means the nonhighway and off-road vehicle  
16 activities advisory committee established in RCW 46.09.340.

17 (2) "Board" means the recreation and conservation funding board  
18 established in RCW 79A.25.110.

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

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

10 (5) "Nonhighway road" means any road owned or managed by a public  
11 agency or any private road for which the owner has granted an easement  
12 for public use for which appropriations from the motor vehicle fund  
13 were not used for (a) original construction or reconstruction in the  
14 last twenty-five years; (~~(b)~~) (b) maintenance in the last four years;  
15 or (c) primitive roads.

16 (6) "Nonhighway road recreation facilities" means recreational  
17 facilities that are adjacent to, or accessed by, a nonhighway road and  
18 intended primarily for nonhighway road recreational users.

19 (7) "Nonhighway road recreational user" means a person whose  
20 purpose for consuming fuel on a nonhighway road or off-road is  
21 primarily for nonhighway road recreational purposes, including, but not  
22 limited to, hunting, fishing, camping, sightseeing, wildlife viewing,  
23 picnicking, driving for pleasure, kayaking/canoeing, and gathering  
24 berries, firewood, mushrooms, and other natural products.

25 (8) "Nonhighway vehicle" means any motorized vehicle including an  
26 ORV when used for recreational purposes on nonhighway roads, trails, or  
27 a variety of other natural terrain.

28 Nonhighway vehicle does not include:

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

31 (b) Snowmobiles or any military vehicles; or

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

36 (9) "Nonmotorized recreational facilities" means recreational  
37 trails and facilities that are adjacent to, or accessed by, a

1 nonhighway road and intended primarily for nonmotorized recreational  
2 users.

3 (10) "Nonmotorized recreational user" means a person whose purpose  
4 for consuming fuel on a nonhighway road or off-road is primarily for  
5 nonmotorized recreational purposes including, but not limited to,  
6 walking, hiking, backpacking, climbing, cross-country skiing,  
7 snowshoeing, mountain biking, horseback riding, and pack animal  
8 activities.

9 (11) "Organized competitive event" means any competition,  
10 advertised in advance through written notice to organized clubs or  
11 published in local newspapers, sponsored by recognized clubs, and  
12 conducted at a predetermined time and place.

13 (12) "ORV recreation facilities" include, but are not limited to,  
14 ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use  
15 areas, designated for ORV use by the managing authority (~~that are~~  
16 ~~intended primarily for ORV recreational users~~)).

17 (13) "ORV recreational user" means a person whose purpose for  
18 consuming fuel on nonhighway roads or off-road is primarily for ORV  
19 recreational purposes, including but not limited to riding an all-  
20 terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or  
21 dune buggy.

22 (14) "ORV sports park" means a facility designed to accommodate  
23 competitive ORV recreational uses including, but not limited to,  
24 motocross racing, four-wheel drive competitions, and flat track racing.  
25 Use of ORV sports parks can be competitive or noncompetitive in nature.

26 (15) "ORV trail" means a multiple-use corridor designated by the  
27 managing authority and maintained for recreational use by motorized  
28 vehicles.

29 **Sec. 3.** RCW 46.09.360 and 2006 c 212 s 4 are each amended to read  
30 as follows:

31 (1) Notwithstanding any of the provisions of this chapter, any  
32 city, county, or other political subdivision of this state, or any  
33 state agency, may regulate the operation of nonhighway vehicles on  
34 public lands, waters, and other properties under its jurisdiction, and  
35 on streets, roads, or highways within its boundaries by adopting  
36 regulations or ordinances of its governing body, provided such  
37 regulations are not less stringent than the provisions of this chapter.

1 (~~(However, the legislative body of a city with a population of less  
2 than three thousand persons may, by ordinance, designate a street or  
3 highway within its boundaries to be suitable for use by off-road  
4 vehicles. The legislative body of a county may, by ordinance,  
5 designate a road or highway within its boundaries to be suitable for  
6 use by off-road vehicles if the road or highway is a direct connection  
7 between a city with a population of less than three thousand persons  
8 and an off-road vehicle recreation facility.))~~)

9 (2) The legislative body of a city or county may, by ordinance,  
10 designate a street, highway, or segment of highway within its  
11 boundaries with a speed limit greater than thirty-five miles per hour  
12 to be suitable for use by off-road vehicles.

13 (3) The legislative body of a city or county may, by ordinance,  
14 designate a road or highway within its boundaries to be unsuitable for  
15 use by off-road vehicles.

16 (4) The legislative body of a city or county may, by ordinance,  
17 designate a segment of a state highway within its boundaries to be  
18 suitable for use by off-road vehicles for the purpose of traversing  
19 natural or manmade obstacles including, but not limited to, use of a  
20 bridge to cross a river, lake, stream, or other water feature and use  
21 of a roadway tunnel when reasonable means do not exist to do otherwise.  
22 Adequate signage or other warning devices must alert other vehicle  
23 traffic of such off-road vehicle usage.

24 **Sec. 4.** RCW 46.09.420 and 2010 c 161 s 217 are each amended to  
25 read as follows:

26 ORV registrations and decals are required under this chapter except  
27 for the following:

28 (1) Off-road vehicles owned and operated by the United States,  
29 another state, or a political subdivision of the United States or  
30 another state.

31 (2) Off-road vehicles owned and operated by this state, a  
32 municipality, or a political subdivision of this state or the  
33 municipality.

34 (3) Off-road vehicles operated on agricultural lands owned or  
35 leased by the off-road vehicle owner or operator.

36 (4) Off-road vehicles owned by a resident of another state that  
37 have a valid ORV use permit or vehicle registration issued in

1 accordance with the laws of the other state. This exemption applies  
2 only to the extent that a similar exemption or privilege is granted  
3 under the laws of that state.

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

8 (6) Vehicles registered under chapter (~~46.16~~) 46.16A RCW or, in  
9 the case of nonresidents, vehicles validly registered for operation  
10 over public highways in the jurisdiction of the owner's residence.

11 **Sec. 5.** RCW 46.09.450 and 2010 c 161 s 221 are each amended to  
12 read as follows:

13 (1) Except as otherwise provided in this section, it is lawful to  
14 operate an off-road vehicle upon:

15 (a) (~~A nonhighway road and in parking areas serving designated~~  
16 ~~off-road vehicle areas if the state, federal, local, or private~~  
17 ~~authority responsible for the management of the nonhighway road~~  
18 ~~authorizes the use of off-road vehicles~~) Any road, nonhighway road, or  
19 highway within the state with a posted speed limit of thirty-five miles  
20 per hour or less; ((and))

21 (b) A street, road, or highway as authorized under RCW 46.09.360;  
22 and

23 (c) Any road, trail, nonhighway road, or highway within the state  
24 while being used under the authority or direction of an appropriate  
25 emergency management, search and rescue, or law enforcement agency.

26 (2) Operations of an off-road vehicle on a nonhighway road, or on  
27 a street, road, or highway as authorized under RCW 46.09.360(~~, under~~)  
28 and this section (~~is~~), are exempt from registration requirements of  
29 chapter (~~46.16~~) 46.16A RCW and vehicle lighting and equipment  
30 requirements of chapter 46.37 RCW.

31 (3) It is unlawful to operate an off-road vehicle upon a private  
32 nonhighway road if the road owner has not authorized the use of off-  
33 road vehicles.

34 (4) It is unlawful to operate an off-road vehicle on any interstate  
35 highway, United States highway, numbered state highway, divided  
36 highway, or limited access highway and its center median.

1       (5) Nothing in this section authorizes trespass on private  
2 property.

3       (~~(+5)~~) (6) The provisions of RCW 4.24.210(5) shall apply to public  
4 landowners who allow members of the public to use public facilities  
5 accessed by a highway, street, or nonhighway road for recreational off-  
6 road vehicle use.

7       **Sec. 6.** RCW 46.09.460 and 2005 c 213 s 5 are each amended to read  
8 as follows:

9       (1) Except as specified in subsection (2) of this section, no  
10 person under (~~(thirteen)~~) sixteen years of age may operate an off-road  
11 vehicle on or across a highway or nonhighway road in this state.

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

17       **Sec. 7.** RCW 46.09.510 and 2007 c 241 s 15 are each amended to read  
18 as follows:

19       The nonhighway and off-road vehicle activities program account is  
20 created in the custody of the state (~~(treasury)~~) treasurer. (~~(Moneys~~  
21 ~~in this account are subject to legislative appropriation.)~~) The  
22 recreation and conservation funding board shall administer the account  
23 for purposes specified in this chapter and shall hold it separate and  
24 apart from all other money, funds, and accounts of the board. Grants,  
25 gifts, or other financial assistance, proceeds received from public  
26 bodies as administrative cost contributions, and any moneys made  
27 available to the state of Washington by the federal government for  
28 outdoor recreation may be deposited into the account. The account is  
29 subject to allotment procedures under chapter 43.88 RCW, but an  
30 appropriation is not required for expenditures.

31       **Sec. 8.** RCW 46.09.520 and 2010 1st sp.s. c 37 s 936 and 2010 c 161  
32 s 222 are each reenacted and amended to read as follows:

33       (1) From time to time, but at least once each year, the state  
34 treasurer shall refund from the motor vehicle fund one percent of the  
35 motor vehicle fuel tax revenues collected under chapter 82.36 RCW,

1 based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle  
2 fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per  
3 gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007;  
4 (c) twenty-one cents per gallon of motor vehicle fuel from July 1,  
5 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor  
6 vehicle fuel from July 1, 2009, through June 30, 2011; and (e)  
7 (~~twenty-three~~) thirty-seven cents per gallon of motor vehicle fuel  
8 beginning July 1, 2011, and thereafter, less proper deductions for  
9 refunds and costs of collection as provided in RCW 46.68.090.

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

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

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

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

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

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

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

1 (A) Not less than thirty percent, together with the funds the board  
2 receives under RCW 46.68.045, may be expended for ORV recreation  
3 facilities;

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

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

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

14 (3) On a yearly basis an agency may not, except as provided in RCW  
15 46.68.045, expend more than ten percent of the funds it receives under  
16 this chapter for general administration expenses incurred in carrying  
17 out this chapter.

18 (4) During the 2009-2011 fiscal biennium, the legislature may  
19 appropriate such amounts as reflect the excess fund balance in the NOVA  
20 account to the department of natural resources to install consistent  
21 off-road vehicle signage at department-managed recreation sites, and to  
22 implement the recreation opportunities on department-managed lands in  
23 the Reiter block and Ahtanum state forest, and to the state parks and  
24 recreation commission. The legislature finds that the appropriation of  
25 funds from the NOVA account during the 2009-2011 fiscal biennium for  
26 maintenance and operation of state parks or to improve accessibility  
27 for boaters and off-road vehicle users at state parks will benefit  
28 boaters and off-road vehicle users and others who use nonhighway and  
29 nonmotorized recreational facilities. The appropriations under this  
30 subsection are not required to follow the specific distribution  
31 specified in subsection (2) of this section.

32 **Sec. 9.** RCW 46.09.530 and 2010 c 161 s 223 are each amended to  
33 read as follows:

34 (1) After deducting administrative expenses and the expense of any  
35 programs conducted under this chapter, the board shall, at least once  
36 each year, distribute the funds it receives under RCW 46.68.045 and  
37 46.09.520 to state agencies, counties, municipalities, federal

1 agencies, nonprofit off-road vehicle organizations, and Indian tribes.  
2 Funds distributed under this section to nonprofit off-road vehicle  
3 organizations may be spent only on projects or activities that benefit  
4 off-road vehicle recreation on publicly owned lands or lands once  
5 publicly owned that come into private ownership in a federally approved  
6 land exchange completed between January 1, 1998, and January 1, 2005.

7 (2) The board shall adopt rules governing applications for funds  
8 administered by the recreation and conservation office under this  
9 chapter and shall determine the amount of money distributed to each  
10 applicant. Agencies receiving funds under this chapter for capital  
11 purposes shall consider the possibility of contracting with the state  
12 parks and recreation commission, the department of natural resources,  
13 or other federal, state, and local agencies to employ the youth  
14 development and conservation corps or other youth crews in completing  
15 the project.

16 (3) The board shall require each applicant for acquisition or  
17 development funds under this section to comply with the requirements of  
18 either the state environmental policy act, chapter 43.21C RCW, or the  
19 national environmental policy act (42 U.S.C. Sec. 4321 et seq.).

20 **Sec. 10.** RCW 46.30.020 and 2010 c 161 s 1115 are each amended to  
21 read as follows:

22 (1)(a) No person may operate a motor vehicle subject to  
23 registration under chapter (~~46.16~~) 46.16A RCW in this state unless  
24 the person is insured under a motor vehicle liability policy with  
25 liability limits of at least the amounts provided in RCW 46.29.090, is  
26 self-insured as provided in RCW 46.29.630, is covered by a certificate  
27 of deposit in conformance with RCW 46.29.550, or is covered by a  
28 liability bond of at least the amounts provided in RCW 46.29.090.  
29 Written proof of financial responsibility for motor vehicle operation  
30 must be provided on the request of a law enforcement officer in the  
31 format specified under RCW 46.30.030.

32 (b) A person who drives a motor vehicle that is required to be  
33 registered in another state that requires drivers and owners of  
34 vehicles in that state to maintain insurance or financial  
35 responsibility shall, when requested by a law enforcement officer,  
36 provide evidence of financial responsibility or insurance as is  
37 required by the laws of the state in which the vehicle is registered.

1 (c) When asked to do so by a law enforcement officer, failure to  
2 display an insurance identification card as specified under RCW  
3 46.30.030 creates a presumption that the person does not have motor  
4 vehicle insurance.

5 (d) Failure to provide proof of motor vehicle insurance is a  
6 traffic infraction and is subject to penalties as set by the supreme  
7 court under RCW 46.63.110 or community restitution.

8 (2) If a person cited for a violation of subsection (1) of this  
9 section appears in person before the court or a violations bureau and  
10 provides written evidence that at the time the person was cited, he or  
11 she was in compliance with the financial responsibility requirements of  
12 subsection (1) of this section, the citation shall be dismissed and the  
13 court or violations bureau may assess court administrative costs of  
14 twenty-five dollars at the time of dismissal. In lieu of personal  
15 appearance, a person cited for a violation of subsection (1) of this  
16 section may, before the date scheduled for the person's appearance  
17 before the court or violations bureau, submit by mail to the court or  
18 violations bureau written evidence that at the time the person was  
19 cited, he or she was in compliance with the financial responsibility  
20 requirements of subsection (1) of this section, in which case the  
21 citation shall be dismissed without cost, except that the court or  
22 violations bureau may assess court administrative costs of twenty-five  
23 dollars at the time of dismissal.

24 (3) The provisions of this chapter shall not govern:

25 (a) The operation of a motor vehicle registered under RCW  
26 46.18.255, governed by RCW 46.16A.170, or registered with the  
27 Washington utilities and transportation commission as common or  
28 contract carriers; or

29 (b) The operation of a motorcycle as defined in RCW 46.04.330, a  
30 motor-driven cycle as defined in RCW 46.04.332, (~~(or)~~) a moped as  
31 defined in RCW 46.04.304, or an off-road vehicle as defined in RCW  
32 46.04.365.

33 (4) RCW 46.29.490 shall not be deemed to govern all motor vehicle  
34 liability policies required by this chapter but only those certified  
35 for the purposes stated in chapter 46.29 RCW.

36 NEW SECTION. **Sec. 11.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 July 1, 2011.

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