

SENATE BILL REPORT

SB 5544

As Reported By Senate Committee On:
Consumer Protection & Housing, February 23, 2007

Title: An act relating to environmental noise abatement.

Brief Description: Abating environmental noise.

Sponsors: Senators Fraser, Poulsen, Fairley, Weinstein, Jacobsen, Franklin and Kline.

Brief History:

Committee Activity: Consumer Protection & Housing: 2/02/07 2/23/07 [DPS, DNP].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 5544 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Haugen, Jacobsen, Kilmer, McCaslin and Tom.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member and Delvin.

Staff: Jacob White (786-7448)

Background: An off-road vehicle (ORV) is defined as any nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

In 1974, the Legislature directed the Department of Ecology (DOE) to adopt noise control rules in order to protect the public's health, safety, and welfare, along with property values and the environment. Local governments may adopt other noise standards if approved by DOE. Any person who violates DOE's noise control rules is subject to a civil penalty not to exceed \$100.

It is a traffic infraction for an ORV to operate at more than 86 decibels at a distance of 50 feet. The penalty for such an infraction may not be less than \$25.

Summary of Bill: It is a traffic infraction for an ORV to operate at more than 96 decibels at a distance of 20 inches from the tailpipe.

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.

It is a traffic infraction for an ORV to create noise that is plainly audible inside or immediately adjacent to a residence. Violators of this rule are subject to a fine of not less than \$100 per violation for a first time violation. Subsequent violations result in a penalty not less than twice the previous penalty, up to a maximum of \$800 for a single penalty.

Local governments are encouraged to impose narrative standards as an alternative to decibel limits, to make enforcement easier.

Any person who violates DOE's noise control rules is subject to a civil penalty of not less than \$100 per violation for a first time violation. Subsequent violations result in a penalty not less than twice the previous penalty, up to a maximum of \$800 for a single penalty.

A person who causes or permits noise, which exceeds the maximum permissible under the DOE guidelines, to intrude into the property of another person is subject to civil penalty, unless they meet a specified exception. Exceptions include: starting, servicing, idling, revving, testing, or transporting for sale or repair as long as the noise does not last for more than five minutes in any 24 hour period between the hours of 7 a.m. and 10 p.m. and the noise is not more than 10 decibels above the established limits.

A party who brings an action for a violation of ORV noise rules is entitled to recover costs and attorney's fees.

"Residential use," "residential area" and "residence" are defined as any area with homes. A "nonhighway vehicle" has the same definition as an ORV.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Consumer Protection & Housing): It is clarified that the tail pipe noise levels of 96 decibels only applies to model year 2008 and beyond. Existing vehicles will be measured against the current standard, which is 105 decibels at 20 inches. The current regulatory noise limit for the property line is codified at 55 decibels. It is clarified that "exterior to the residence" means within ten feet of the residence. A definition of plainly audible and an alternative measurement of 45 decibels is added. The penalties are changed to the first offense being \$100 and subsequent offenses being double the previous fine, up to a maximum fine of \$800 for a single violation. Recoverable attorney's fees and costs are narrowed to when nuisance actions are brought to enjoin violations of the property line 55 decibels, and inside the residence plainly audible or greater than 45 decibels.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Some people are inconsiderate and harass their neighbors with ORV noise. Some ORV drivers even engage in severe retaliatory harassment against those who complain. This type of harassment prevented some homeowners from coming to the hearing. The noise from ORVs can be intermittent, of variable frequency, and lasting an unknown duration; this noise is often in areas with homes directly adjacent to where

the ORV drivers ride. Living with this kind of constant noise can cause depression and stress. It can also cause financial harm by making it difficult to sell a house.

ORV riders often have their mufflers adjusted out of the pretense of adding power. These adjustments often lead to a louder ORV, making it so that manufacturer standards don't cure the noise problem.

This bill builds off of the Interagency Committee on Outdoor Recreation Report. Currently, the penalties are too low for having an ORV that violates the noise ordinances. Many other districts in Washington and throughout the U.S. have passed laws to cut down on ORV noise. People will still be able to use ORVs, so long as they aren't using them around homes with excess noise. Conducting a noise study can be very expensive; therefore, it is necessary to have a narrative standard to measure noise.

CON: ORV's do not lower property values. ORV parks are not located in suburban areas. The term "plainly audible" is too subjective. There should be a grant through DOE so that local law enforcement can have a hard scientific standard instead of a narrative standard. It is unfair for home owners to be able to receive attorney's fees while ORV owners cannot. Few race tracks will meet this standard, which could ruin the ORV industry.

This bill could negatively impact off-road training places, causing more "bootleg renegades" who don't follow rules. There are already ways to deal with the problems addressed in this bill. This bill will take officers away from their job to protect and maintain order.

OTHER: This bill could have an unintended affect on government forestry agencies that use ORVs in forest as part of their job. An amendment is being worked on between homeowner representatives and government forestry agencies to address this problem.

Persons Testifying: PRO: Kaleen Cottingham, Nancy Armstrong, Leslie Seffean, Ben T., John Coelho, Coalition Against ORV Nuisances; Alan Wald, Pat Wald, citizens.

CON: Larry Walker, Washington Road Riders Association; John Eaton, Vice Chair Washington Off-Highway Vehicle Alliance; Tod Petersen, Vice President Northwest Motorcycle Association; Roxanne White, Realtor; John Tillman, President Mudslingers Motorcycle Club; Bruce Long, Aloha Mul-she Motorcycle Club; Kevin McGrath, Washington Off Highway Vehicle Alliance (WOHVA), Northwest Motorcycle Association; Barb Anderson, WOHVA, SMC.

OTHER: Debora Munguia, Washington Forest Protection Association.