

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 174

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING OFF-HIGHWAY MOTOR  
VEHICLE REGISTRATION FEES; REQUIRING NONRESIDENT OFF-HIGHWAY  
MOTOR VEHICLE PERMITS; IMPOSING SAFETY REQUIREMENTS; CREATING  
THE OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD; CREATING THE TRAIL  
SAFETY FUND; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Off-Highway Motor Vehicle  
Act is enacted to read:

"NEW MATERIAL DEFINITIONS. -- As used in the Off-Highway  
Motor Vehicle Act:

- A. "board" means the off-highway motor vehicle  
safety board;
- B. "fund" means the trail safety fund;
- C. "off-highway motor vehicle" means a motor

1 vehicle designed by the manufacturer for operation exclusively  
2 off the highway or road and includes:

3 (1) "all-terrain vehicle", which means a motor  
4 vehicle fifty inches or less in width, having an unladen dry  
5 weight of one thousand pounds or less, traveling on three or  
6 more low-pressure tires and having a seat designed to be  
7 straddled by the operator and handlebar-type steering control;

8 (2) "off-highway motorcycle", which means a  
9 motor vehicle traveling on not more than two tires and having a  
10 seat designed to be straddled by the operator and that has  
11 handlebar-type steering control; or

12 (3) "snowmobile", which means a motor vehicle  
13 designed for travel on snow or ice and steered and supported in  
14 whole or in part by skis, belts, cleats, runners or low-  
15 pressure tires; and

16 D. "staging area" means a parking lot, trailhead or  
17 other location to or from which an off-highway motor vehicle is  
18 transported so that it may be placed into operation or removed  
19 from operation. "

20 Section 2. Section 66-3-1003 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 199, as amended) is amended to read:

22 "66-3-1003. OFF-HIGHWAY MOTOR VEHICLES--REGISTRATION. --  
23 [A.] Unless exempted from the provisions of the Off-Highway  
24 Motor Vehicle Act, no person shall operate [a] an off-highway  
25 motor vehicle [~~which is to be operated or used exclusively off~~

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1 ~~the highways of this state]~~ unless the off-highway motor  
 2 vehicle has been registered in accordance with [~~the Off-Highway~~  
 3 ~~Motor Vehicle Act and the regulations of the division adopted~~  
 4 ~~pursuant to that act.~~

5 B. ~~Application for registration and certificate of~~  
 6 ~~title shall be made as provided in Subsections A through C of~~  
 7 ~~Section 66-3-4 NMSA 1978. Upon receipt of an application for~~  
 8 ~~an original registration of the motor vehicle or for any~~  
 9 ~~certificate of title, the division shall make such examination~~  
 10 ~~of records and indexes as provided in Section 66-3-8 NMSA 1978,~~  
 11 ~~and registration indexes shall be kept and maintained for the~~  
 12 ~~motor vehicles in the manner provided in Section 66-3-9 NMSA~~  
 13 ~~1978. The division shall issue evidence of registration and a~~  
 14 ~~certificate of title for the motor vehicles as provided in~~  
 15 ~~Section 66-3-10 NMSA 1978.~~

16 C. ~~Upon receipt of the registration certificate,~~  
 17 ~~the owner of an off-highway motor vehicle shall affix the~~  
 18 ~~registration plate on the motor vehicle as prescribed by the~~  
 19 ~~regulations adopted by the division]~~ Chapter 66, Article 3 NMSA  
 20 1978. The owner shall affix the registration plate or  
 21 validating sticker as provided in Chapter 66, Article 3 NMSA  
 22 1978. "

23 Section 3. Section 66-3-1004 NMSA 1978 (being Laws 1978,  
 24 Chapter 35, Section 200, as amended) is amended to read:

25 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT

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1 PERMIT FEES. --

2 A. The [~~fee~~] fees for [~~registration of~~] registering  
3 an off-highway motor vehicle [~~is fifteen dollars (\$15.00)~~] are:

4 (1) seventeen dollars (\$17.00) for each off-  
5 highway motor vehicle; and

6 (2) no more than forty dollars (\$40.00) to be  
7 paid every two years at the time of registration for an off-  
8 highway user fee for each off-highway motor vehicle. The  
9 tourism department shall promulgate rules authorizing an off-  
10 highway user fee.

11 B. The registration certificate shall be good for  
12 two years after the [~~year~~] month in which the off-highway motor  
13 vehicle is registered. Each registration [~~must~~] certificate  
14 shall be renewed [~~every three years to be valid~~] every two  
15 years.

16 [~~B.~~] C. Upon a change of ownership, the new owner  
17 [~~must~~] shall make application and pay [~~a~~] registration [~~fee~~]  
18 fees of [~~fifteen dollars (\$15.00)~~]:

19 (1) seventeen dollars (\$17.00) in the same  
20 manner as provided by [~~regulations~~] rules of the division for  
21 original registration; and

22 (2) no more than forty dollars (\$40.00) to be  
23 paid every two years at the time of registration for an off-  
24 highway user fee for each off-highway motor vehicle. The  
25 tourism department shall promulgate rules authorizing an off-

1 highway user fee.

2 D. The fees for a nonresident permit of an off-  
3 highway motor vehicle for a nonresident of the state are:

4 (1) seventeen dollars (\$17.00) for each off-  
5 highway motor vehicle that has not already been registered in  
6 another state; and

7 (2) no more than forty dollars (\$40.00) to be  
8 paid every two years at the time of registration for an off-  
9 highway user fee for each off-highway motor vehicle that is not  
10 currently in compliance with a similar off-highway fee law or  
11 rule in another state; or

12 (3) seventeen dollars (\$17.00) for a ninety-  
13 day permit for both the off-highway motor vehicle, not  
14 otherwise registered, and the highway user fee.

15 ~~[C.]~~ E. Duplicate [certificates of] registration  
16 certificates and nonresident permits shall be issued upon  
17 payment of a [one dollar (\$1.00)] seven-dollar-fifty-cent  
18 (\$7.50) fee.

19 F. The tourism department shall impose a one-dollar  
20 (\$1.00) fee on registration certificates and nonresident  
21 permits for the New Mexico clean and beautiful program.

22 G. Fees collected pursuant to this section shall be  
23 distributed as follows:

24 (1) of each seventeen dollars (\$17.00)  
25 collected pursuant to Paragraph (1) of Subsection A, Paragraph

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1 (1) of Subsection C or Paragraph (1) of Subsection D of this  
2 section, two dollars (\$2.00) shall be distributed to the  
3 division and fifteen dollars (\$15.00) shall be distributed  
4 pursuant to Section 66-6-23 NMSA 1978;

5 (2) each forty dollars (\$40.00) collected  
6 pursuant to Paragraph (2) of Subsection A, or Paragraph (1) of  
7 Subsection D, Paragraph (2) of Subsection C or Paragraph (2) of  
8 Subsection D of this section shall be distributed to the fund;

9 (3) each seven dollars fifty cents (\$7.50)  
10 collected pursuant to Subsection E of this section shall be  
11 distributed to the division; and

12 (4) of each seventeen dollars (\$17.00)  
13 collected pursuant to Paragraph (3) of Subsection D of this  
14 section, two dollars (\$2.00) shall be distributed to the  
15 division and fifteen dollars (\$15.00) shall be distributed to  
16 the fund.

17 H. The tourism department, in conjunction with the  
18 division, may establish and maintain sites to collect fees and  
19 issue permits for nonresidents."

20 Section 4. Section 66-3-1005 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 201, as amended) is amended to read:

22 "66-3-1005. EXEMPTIONS.--The provisions of the Off-  
23 Highway Motor Vehicle Act shall not apply to off-highway motor  
24 vehicles that are:

25 A. owned and operated by ~~any~~ an agency or

1 department of the United States, this state or ~~[any]~~ a  
 2 political subdivision of this state;

3 B. operated exclusively on lands privately held by  
 4 the off-highway motor vehicle owner; provided that the  
 5 appropriate tax or fee has been paid in lieu of the motor  
 6 vehicle excise tax and registration fees;

7 C. ~~[owned by nonresidents of this state; provided~~  
 8 ~~that the use]~~ used in this state ~~[shall be for competition~~  
 9 ~~purposes only and]~~ only for organized and endorsed competition  
 10 purposes; ~~[shall not exceed fifteen days and]~~ provided  
 11 ~~[further]~~ that the use is not on a rental basis;

12 D. brought into this state by manufacturers or  
 13 distributors for wholesale purposes and not used for  
 14 demonstrations;

15 E. ~~[which are]~~ in the possession of dealers as  
 16 stock in trade and not used for demonstration purposes; ~~[or]~~

17 F. ~~[which are]~~ farm tractors as defined in Section  
 18 66-1-4.6 NMSA 1978, special mobile equipment as defined in  
 19 Section ~~[66-1-4]~~ 66-1-4.16 NMSA 1978 or off-highway motor  
 20 vehicles while being used for agricultural operations; or

21 G. used exclusively on private closed courses,  
 22 whether owned by the rider or another, provided that, if  
 23 applicable, the excise tax and registration fee has been paid  
 24 and is current. "

25 Section 5. Section 66-3-1006 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 202, as amended) is amended to read:

2 "66-3-1006. GROUNDS FOR REFUSING REGISTRATION OR  
3 CERTIFICATE OF TITLE. -- The division may refuse registration or  
4 issuance of a certificate of title or any transfer of a  
5 registration certificate upon the grounds that:

6 A. the division has reasonable grounds to believe  
7 that the application contains any false or fraudulent statement  
8 or that the applicant has failed to furnish the required  
9 information or reasonable additional information requested by  
10 the division or that the applicant is not entitled to the  
11 issuance of a certificate of title or registration certificate  
12 of the off-highway motor vehicle under the Motor Vehicle Code  
13 or laws of this state;

14 B. the division has reasonable [~~ground~~] grounds to  
15 believe that the off-highway motor vehicle is [a] stolen or  
16 embezzled [~~vehicle~~] or that the granting of a registration  
17 certificate or the issuance of a certificate of title would  
18 constitute a fraud against the rightful owner or other person  
19 having a valid lien upon the off-highway motor vehicle;

20 C. the division has reasonable grounds to believe  
21 that a nonresident applicant is not entitled to registration  
22 issuance under the laws of the nonresident applicant's state of  
23 residence;

24 [~~C.~~] D. the required [~~fee has~~] fees have not been  
25 paid; or

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1           ~~[D-]~~ E. the motor vehicle excise tax has not been  
2 paid pursuant to Section 66-3-1005 NMSA 1978. "

3           Section 6. Section 66-3-1007 NMSA 1978 (being Laws 1978,  
4 Chapter 35, Section 203, as amended) is amended to read:

5           "66-3-1007. ~~[EVIDENTIAL]~~ EVIDENTIARY VALUE OF  
6 CERTIFICATE. --A certificate of title issued by the division for  
7 ~~[a]~~ an off-highway motor vehicle shall be received ~~[in~~  
8 ~~evidence]~~ as prima facie evidence of the ownership of the off-  
9 highway motor vehicle named in the certificate and as prima  
10 facie evidence of all liens and encumbrances against the off-  
11 highway motor vehicle appearing on the certificate. "

12           Section 7. Section 66-3-1008 NMSA 1978 (being Laws 1978,  
13 Chapter 35, Section 204, as amended) is amended to read:

14           "66-3-1008. REGISTRATION PLATES TO BE FURNISHED BY  
15 DIVISION. --The division, upon registering ~~[a]~~ an off-highway  
16 motor vehicle, shall issue to the owner registration plates or  
17 ~~[validation]~~ validating stickers, as provided in Section  
18 66-3-14 NMSA 1978. "

19           Section 8. A new section of the Off-Highway Motor Vehicle  
20 Act is enacted to read:

21           "[NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING  
22 ORGANIZATION--LICENSE. --

23           A. The division shall issue a license to an off-  
24 highway motor vehicle safety training organization when the  
25 division is satisfied that the organization:

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1 (1) maintains an established place of business  
2 open to the public;

3 (2) has the proper equipment necessary to give  
4 instruction in the operation of the class of off-highway motor  
5 vehicles for which a course is designed; and

6 (3) has been approved and certified by the  
7 board.

8 B. The license shall be valid for a period of one  
9 year from midnight of the last day of the month of issuance of  
10 the license, unless canceled, suspended or revoked by the  
11 division.

12 C. The license shall be renewed annually. For  
13 renewal of the license, the division shall require that the  
14 off-highway motor vehicle safety training organization satisfy  
15 all requirements of the initial licensure."

16 Section 9. A new section of the Off-Highway Motor Vehicle  
17 Act is enacted to read:

18 "[NEW MATERIAL] OPERATION AND EQUIPMENT--SAFETY  
19 REQUIREMENTS. --

20 A. A driver shall not operate an off-highway motor  
21 vehicle:

22 (1) in a careless, reckless or negligent  
23 manner so as to endanger the person or property of another;

24 (2) while under the influence of intoxicating  
25 beverages or narcotic or other drugs to a degree that renders

1 the driver incapable of reasonable operation, as provided by  
2 Section 66-8-102 NMSA 1978;

3 (3) unless it is equipped with a United States  
4 forest service-approved spark arrester; provided that a  
5 snowmobile is exempt from this provision;

6 (4) when conditions such as darkness limit  
7 visibility to five hundred feet or less, unless the off-highway  
8 motor vehicle is equipped with:

9 (a) one or more headlights of sufficient  
10 candlepower to light objects at a distance of one hundred fifty  
11 feet; and

12 (b) at least one taillight of sufficient  
13 intensity to exhibit a red or amber light at a distance of two  
14 hundred feet under normal atmospheric conditions;

15 (5) unless it is equipped in such a way so  
16 that the noise produced by the off-highway motor vehicle does  
17 not exceed ninety-six decibels when measured using test  
18 procedures established by the society of automotive engineers  
19 pursuant to standard J-1287;

20 (6) in pursuit of, with intent to hunt, any  
21 species of animal or bird protected by law unless otherwise  
22 authorized by the state game commission; or

23 (7) unless in possession of the person's  
24 certificate of registration or nonresident permit.

25 B. An off-highway motor vehicle may not be sold or

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1 offered for sale unless it is:

2 (1) equipped in such a way so that the noise  
3 produced by the off-highway motor vehicle does not exceed  
4 ninety-six decibels when measured using test procedures  
5 established by the society of automotive engineers pursuant to  
6 standard J-1287; or

7 (2) sold or offered for sale only for  
8 organized competition.

9 C. A person under the age of eighteen shall not  
10 operate or ride upon an off-highway motor vehicle unless the  
11 person is wearing eye protection and a safety helmet that is  
12 securely fastened in a normal manner as headgear and that meets  
13 the standards specified by the board. The board shall adopt  
14 rules establishing standards covering the specifications of eye  
15 protection and safety helmets.

16 D. A person under the age of ten may operate an  
17 all-terrain vehicle if he is visually supervised at all times  
18 by a parent, legal guardian or certified instructor of a safety  
19 training course certified by the board. A person under the age  
20 of eighteen shall obtain an off-highway motor vehicle safety  
21 permit from the division, for which the person must have  
22 parental permission. The safety permit shall be in the  
23 person's possession when operating an off-highway motor vehicle  
24 and shall be obtained only when the person successfully  
25 completes a training course certified by the board.

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1           E. A person who is at least ten years of age but  
2 under the age of eighteen years shall not operate an all-  
3 terrain vehicle unless the person is visually supervised at all  
4 times by a parent or legal guardian or the person is visually  
5 supervised at all times by a person over the age of eighteen  
6 who has a valid driver's license.

7           F. A person under the age of eighteen may operate  
8 an all-terrain vehicle without visual supervision if the person  
9 is:

10                   (1) over the age of fifteen and has a valid  
11 driver's license and off-highway motor vehicle safety permit;

12                   (2) over the age of twelve and has a valid  
13 motorcycle license and off-highway motor vehicle safety permit;  
14 or

15                   (3) part of an organized tour under the  
16 guidance or direction of a guide certified by the board.

17           G. A person shall not operate an off-highway motor  
18 vehicle while carrying a passenger unless the vehicle is  
19 specifically designed by the manufacturer to carry a passenger.

20           H. A person shall not operate an off-highway motor  
21 vehicle in excess of ten miles per hour within two hundred feet  
22 of a business, animal shelter, horseback rider, bicyclist,  
23 pedestrian or occupied dwelling. A person operating an off-  
24 highway motor vehicle on a closed course or track for  
25 competitive use or practice is exempt from the provisions of

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1 this subsection. "

2 Section 10. A new section of the Off-Highway Motor  
3 Vehicle Act is enacted to read:

4 "[NEW MATERIAL] REQUIREMENTS OF DEALERS TO DISTRIBUTE  
5 SAFETY INFORMATION. -- A dealer selling off-highway motor  
6 vehicles shall distribute information recommended by the board  
7 to off-highway motor vehicle purchasers on state laws, safety  
8 requirements, training programs, operating characteristics and  
9 potential risk of injury associated with off-highway motor  
10 vehicles. "

11 Section 11. Section 66-3-1011 NMSA 1978 (being Laws 1975,  
12 Chapter 240, Section 11, as amended) is amended to read:

13 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS. --

14 A. [~~No~~] A person shall not operate an off-highway  
15 motor vehicle on any limited access highway or freeway at any  
16 time.

17 B. A person shall not operate off-highway motor  
18 vehicles on state game commission-owned, -controlled or  
19 -administered land except as specifically permitted pursuant to  
20 Chapter 17, Article 6 NMSA 1978.

21 C. A person shall not operate an off-highway motor  
22 vehicle on land owned, controlled or administered by the state  
23 parks division of the energy, minerals and natural resources  
24 department as prohibited pursuant to Chapter 16, Article 2 NMSA  
25 1978.

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1            ~~[B.]~~ D. Off-highway motor vehicles may cross  
 2 streets or highways, except limited access highways or  
 3 freeways, if the crossings are made after coming to a complete  
 4 stop prior to entering the roadway. ~~[These]~~ Off-highway motor  
 5 vehicles shall yield the right of way to oncoming traffic and  
 6 shall begin a crossing only when it can be executed safely and  
 7 then cross in the most direct manner as close to a  
 8 perpendicular angle as possible. "

9            Section 12. Section 66-3-1012 NMSA 1978 (being Laws 1978,  
 10 Chapter 35, Section 208, as amended) is amended to read:

11            "66-3-1012. ~~[MOVEMENT]~~ DRIVING OF OFF-HIGHWAY MOTOR  
 12 VEHICLES ADJACENT TO HIGHWAY. --

13            A. Off-highway motor vehicles issued a registration  
 14 plate ~~[pursuant to Subsection C of Section 66-3-1003 NMSA~~  
 15 ~~1978]~~, validating sticker or nonresident permit may be ~~[moved,~~  
 16 ~~by nonmechanical means only]~~ driven adjacent to a highway, in a  
 17 manner so as not to interfere with traffic upon the highway,  
 18 yielding to all vehicles entering or exiting the highway, only  
 19 for the purpose of gaining access to or returning from areas  
 20 designed for the operation of off-highway motor vehicles by the  
 21 shortest possible route and when no other route is available or  
 22 when the area adjacent to a highway is being used as a staging  
 23 area. Such use must occur between the highway and fencing that  
 24 separates the highway from private or public lands.

25            B. When snow conditions permit, an off-highway

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1 motor vehicle may be operated on the right-hand side of a  
2 highway, parallel, but not closer than ten feet, to the inside  
3 of the plow bank. "

4 Section 13. Section 66-3-1013 NMSA 1978 (being Laws 1975,  
5 Chapter 240, Section 13, as amended) is amended to read:

6 "66-3-1013. LIABILITY ON PRIVATE LANDS. --

7 A. ~~[No]~~ A landowner shall not be held liable for  
8 damages arising out of off-highway motor vehicle-related  
9 accidents or injuries occurring on ~~[his]~~ the landowner's lands  
10 in which ~~[he]~~ the landowner is not directly involved unless the  
11 entry on the lands is subject to payment of a fee.

12 B. It is unlawful to operate an off-highway motor  
13 vehicle on private lands or roads except with the express  
14 permission of the ~~[owner]~~ landowner or leaseholder of the  
15 lands. "

16 Section 14. Section 66-3-1014 NMSA 1978 (being Laws 1975,  
17 Chapter 240, Section 14, as amended) is amended to read:

18 "66-3-1014. ACCIDENTS AND ACCIDENT REPORTS. -- ~~[Any~~  
19 ~~operator]~~ The driver of an off-highway motor vehicle involved  
20 in an accident resulting in injuries to or the death of ~~[any]~~ a  
21 person or resulting in damage to public or private property to  
22 the extent of ~~[fifty dollars (\$50.00)]~~ five hundred dollars  
23 (\$500) or more shall immediately notify a law enforcement  
24 ~~[officer or a law enforcement]~~ agency of the accident and the  
25 facts relating to the accident. If the driver is under the age

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1 of eighteen, the driver's parent or legal guardian shall  
 2 immediately notify a law enforcement agency of the accident and  
 3 the facts relating to the accident."

4 Section 15. Section 66-3-1015 NMSA 1978 (being Laws 1978,  
 5 Chapter 35, Section 211, as amended) is amended to read:

6 "66-3-1015. ENFORCEMENT. -- ~~[Every]~~ A wildlife conservation  
 7 officer, state ~~[policeman]~~ police officer or peace officer of  
 8 this state or any of its political subdivisions, upon  
 9 displaying ~~[his]~~ a badge of office, has the authority to  
 10 enforce the provisions of the Off-Highway Motor Vehicle Act and  
 11 may:

12 A. require ~~[the operator of any]~~ an off-highway  
 13 motor vehicle operator to produce:

14 (1) the certificate of registration or  
 15 nonresident permit;

16 (2) proof of successfully completing a board-  
 17 certified training course, when required by Section 11 of this  
 18 2004 act; and

19 (3) the personal identification of the  
 20 operator; and ~~[may]~~

21 B. issue citations for violations of the provisions  
 22 of the Off-Highway Motor Vehicle Act. "

23 Section 16. A new section of the Off-Highway Motor  
 24 Vehicle Act is enacted to read:

25 "[NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD--

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1 CREATION-- MEMBERS-- RESPONSIBILITIES-- COMPENSATION. --

2 A. The "off-highway motor vehicle safety board" is  
3 created and shall be composed of nine ex-officio members or  
4 their designees and fifteen appointed members as follows:

5 (1) the director of the department of game and  
6 fish or the director's designee;

7 (2) the director of the motor vehicle division  
8 or the director's designee;

9 (3) the secretary of transportation or the  
10 secretary's designee;

11 (4) the secretary of public safety or the  
12 secretary's designee;

13 (5) the commissioner of public lands or the  
14 commissioner's designee;

15 (6) the secretary of energy, minerals and  
16 natural resources or the secretary's designee;

17 (7) the secretary of tourism or the  
18 secretary's designee;

19 (8) the secretary of health or the secretary's  
20 designee;

21 (9) the director of the state parks division  
22 of the energy, minerals and natural resources department or the  
23 director's designee;

24 (10) one member of the New Mexico department  
25 of agriculture selected by the board of regents of New Mexico

1 state university;

2 (11) one representative from each of the  
3 state's six tourism regions with expertise in the areas of off-  
4 highway motor vehicle safety or motorized and non-motorized  
5 recreation, two of whom shall be appointed by the secretary of  
6 health, two of whom shall be appointed by the secretary of  
7 tourism and two of whom shall be appointed by the secretary of  
8 energy, minerals and natural resources, to include:

9 (a) at least one member of a recognized  
10 off-highway motorcycle user group;

11 (b) one member of an all-terrain vehicle  
12 user group; and

13 (c) one member of a snowmobile user  
14 group;

15 (12) three representatives from local law  
16 enforcement agencies, who shall be appointed by the secretary  
17 of public safety;

18 (13) two representatives from a conservation  
19 or environmental organization, who shall be appointed by the  
20 secretary of energy, minerals and natural resources;

21 (14) two off-highway motor vehicle dealers,  
22 who shall be appointed by the secretary of tourism; and

23 (15) one health professional with expertise in  
24 injury prevention or treatment, who shall be appointed by the  
25 secretary of health.

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1           B. The board shall select a chairperson, a vice  
2 chairperson and other officers as it deems necessary.

3           C. The board shall meet no less than twice annually  
4 and may meet more frequently upon the call of the chairperson.  
5 Nine board members then serving constitute a quorum for the  
6 transaction of board business. The board shall:

7                   (1) by January 1, 2006, develop minimum  
8 criteria for certification as an approved off-highway motor  
9 vehicle safety training organization. The criteria shall  
10 include curriculum and materials for:

11                           (a) training instructors to teach off-  
12 highway motor vehicle operation and safety;

13                           (b) training the public about off-  
14 highway motor vehicle safety;

15                           (c) teaching responsible use of off-  
16 highway motor vehicles with respect to environmental  
17 considerations, private property restrictions, off-highway  
18 motor vehicle operating laws and prohibitions against operating  
19 off-highway motor vehicles under the influence of alcohol or  
20 drugs; and

21                           (d) training the public about age-  
22 appropriate "size-fit" use of off-highway motor vehicles;

23                   (2) adopt and promulgate rules relating to  
24 age-appropriate "size-fit" use of off-highway motor vehicles  
25 and the acceptance or accreditation of instruction or safety

1 courses provided in another state;

2 (3) by January 1, 2007, implement a state off-  
3 highway motor vehicle safety training and certification  
4 program;

5 (4) upon presentation to the board of a  
6 proposed program by an applicant to become an approved off-  
7 highway motor vehicle safety training organization, determine  
8 whether the applicant's program meets the minimum criteria and,  
9 if approved, shall recommend the organization for licensing  
10 pursuant to Section 10 of this 2004 act;

11 (5) set criteria for locating off-highway  
12 motor vehicle parks, facilities and trails, to include  
13 consideration of their effect on:

14 (a) wildlife and the environment;

15 (b) adjacent state, county, federal,  
16 tribal and private property;

17 (c) other recreational and  
18 nonrecreational uses on the same or adjacent lands; and

19 (d) archaeological, cultural and  
20 historic resources;

21 (6) make grants from the fund to:

22 (a) develop and maintain trails, build  
23 and maintain staging areas, conduct restoration, market safety  
24 programs and promote safety for off-highway motor vehicles; and

25 (b) meet the necessary expenses incurred

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1 in carrying out the Off-Highway Motor Vehicle Act;

2 (7) determine off-highway motor vehicle park,  
3 facility and trail locations based on an assessment of the  
4 criteria in this subsection and all off-highway motor vehicle  
5 operating laws. The board shall solicit and consider public  
6 input when conducting its assessment;

7 (8) restore or, if deemed necessary, close  
8 off-highway motor vehicle tracks or trails if they pose  
9 significant or irreversible environmental damage, a danger to  
10 users or a public nuisance as determined by the board. The  
11 board shall consider and to the extent consistent with the  
12 requirements of this section, construct alternative tracks or  
13 trails as part of the closure process;

14 (9) set criteria for grants made from the  
15 fund, including the:

16 (a) applicant's financial and legal  
17 status;

18 (b) applicant's management plan,  
19 including specific measures to avoid or minimize environmental  
20 damage to public and private lands and danger to users and  
21 spectators;

22 (c) operating budget for the park,  
23 trail, facility or staging area; and

24 (d) process by which the board will  
25 solicit and incorporate public input when reviewing grant

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1 applications; and

2 (10) certify tour guides.

3 D. Board members shall receive per diem and mileage  
4 as provided for nonsalaried public officers in the Per Diem and  
5 Mileage Act and shall receive no other compensation, perquisite  
6 or allowance. "

7 Section 17. A new section of the Off-Highway Motor  
8 Vehicle Act is enacted to read:

9 "[NEW MATERIAL] FUND CREATED--DISPOSITION. --

10 A. The "trail safety fund" is created in the state  
11 treasury.

12 B. The fund shall be administered by the tourism  
13 department. Money collected pursuant to the Off-Highway Motor  
14 Vehicle Act, including the off-highway user fee, shall be  
15 deposited with the state treasurer for credit to the fund. The  
16 state treasurer shall invest the fund as other state funds are  
17 invested. All balances in the fund shall remain in the fund  
18 and shall not revert to the general fund.

19 C. The tourism department, as directed by the  
20 board, shall make distributions from the fund to develop and  
21 maintain trails, build and maintain staging areas, market  
22 safety programs and promote safety for off-highway motor  
23 vehicles and for the purpose of meeting the necessary expenses  
24 incurred by the tourism department and the division in carrying  
25 out the provisions of the Off-Highway Motor Vehicle Act. "

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1 Section 18. A new section of the Off-Highway Motor  
2 Vehicle Act is enacted to read:

3 "[NEW MATERIAL] PENALTIES. --

4 A. Unless the violation is declared a felony, a  
5 petty misdemeanor or a citation under the Motor Vehicle Code, a  
6 person who violates the provisions of the Off-Highway Motor  
7 Vehicle Act is guilty of a misdemeanor, as provided by Section  
8 66-8-7 NMSA 1978.

9 B. In addition to other penalties imposed by the  
10 court, when a person is convicted of a felony or misdemeanor  
11 committed while operating an off-highway motor vehicle, the  
12 person may be ordered by the court to complete a board-  
13 certified safety training course. "

14 Section 19. A new section of the Off-Highway Motor  
15 Vehicle Act is enacted to read:

16 "[NEW MATERIAL] SAFETY HELMET. -- Failure by a passenger or  
17 driver under the age of eighteen to use a safety helmet while  
18 on an off-highway motor vehicle shall not in any instance  
19 constitute fault or negligence and shall not limit or apportion  
20 damages. "

21 Section 20. REPEAL. -- Sections 66-9-1, 66-9-2, 66-9-4,  
22 66-9-8, 66-9-9 and 66-9-11 through 66-9-13 NMSA 1978 (being  
23 Laws 1971, Chapter 177, Sections 1 and 2, Laws 1973, Chapter  
24 86, Section 1 and Laws 1971, Chapter 177, Sections 7, 8, 10, 11  
25 and 12, as amended) are repealed.

1           Section 21.   EFFECTIVE DATE. --The effective date of the  
2 provisions of this act is January 1, 2005.

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