

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 379

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE OFF-HIGHWAY MOTOR VEHICLE ACT TO PROVIDE FOR REGULATION OF THE OPERATION OF OFF-HIGHWAY VEHICLES TO ENSURE THEIR SAFE AND RESPONSIBLE OPERATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. Section 66-3-1001.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 1) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle [safety] advisory board;

B. "department" means the department of game and

.177248.4

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1 fish;

2 ~~[B.]~~ C. "division" means the motor vehicle division
3 of the taxation and revenue department;

4 ~~[C.]~~ D. "fund" means the trail safety fund;

5 ~~[D.]~~ E. "off-highway motor vehicle" means a motor
6 vehicle designed by the manufacturer for operation exclusively
7 off the highway or road and includes:

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

13 (2) "off-highway motorcycle", which means a
14 motor vehicle traveling on not more than two tires and having a
15 seat designed to be straddled by the operator and that has
16 handlebar-type steering control; ~~[E.]~~

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

21 (4) "recreational off-highway vehicle", which
22 means a motor vehicle designed for travel on four or more
23 non-highway tires, for recreational use by one or more persons,
24 and having:

25 (a) a steering wheel for steering

.177248.4

1 control;

2 (b) non-straddle seating;

3 (c) maximum speed capability greater
4 than thirty-five miles per hour;

5 (d) gross vehicle weight rating no
6 greater than three thousand seven hundred fifty pounds;

7 (e) less than eighty inches in overall
8 width, exclusive of accessories;

9 (f) engine displacement of less than one
10 thousand cubic centimeters; and

11 (g) identification by means of a
12 seventeen-character vehicle identification number; or

13 (5) by rule of the department, any other
14 vehicles that may enter the market that fit the general profile
15 of vehicles operated off the highway for recreational purposes;

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

20 ~~[F.]~~ G. "unpaved public roadway" means a dirt
21 graveled street or road that is constructed, signed and
22 maintained for regular passenger-car use by the general
23 public."

24 Section 2. Section 66-3-1004 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 200, as amended) is amended to read:

.177248.4

1 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT
2 PERMIT FEES--RENEWAL--DISTRIBUTION OF FEES.--Fees shall be
3 collected and distributed as follows:

4 A. the fees for registering an off-highway motor
5 vehicle are:

6 (1) seventeen dollars (\$17.00) for each
7 off-highway motor vehicle, of which five dollars (\$5.00) is
8 appropriated to the division to defray the cost of making and
9 issuing registration certificates, validating stickers and
10 nonresident permits for off-highway motor vehicles. The
11 remaining twelve dollars (\$12.00) shall be deposited in the
12 motor vehicle suspense fund for distribution pursuant to
13 Section 66-6-23 NMSA 1978; and

14 (2) an amount determined by rule of the
15 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)]~~
16 forty dollars (\$40.00) for an off-highway user fee for each
17 off-highway motor vehicle, which shall be distributed to the
18 fund;

19 B. upon a change of ownership, the new owner shall
20 make application and pay registration fees of:

21 (1) seventeen dollars (\$17.00) in the same
22 manner as provided by rules of the division for original
23 registration; and

24 (2) an amount determined by rule of the
25 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)]~~

.177248.4

1 forty dollars (\$40.00) for an off-highway user fee for each
2 off-highway motor vehicle, which shall be distributed to the
3 fund;

4 C. the fees for a nonresident permit of an
5 off-highway motor vehicle are either:

6 (1) seventeen dollars (\$17.00) for each
7 off-highway motor vehicle that is not registered in another
8 state; and

9 (2) an amount determined by rule of the
10 [~~tourism~~] department not to exceed [~~thirty dollars (\$30.00)~~]
11 forty dollars (\$40.00) for an off-highway user fee for each
12 off-highway motor vehicle that is not currently in compliance
13 with a similar off-highway user fee law or rule in another
14 state, which shall be distributed to the fund; or

15 (3) seventeen dollars (\$17.00) for a
16 ninety-day permit to include both the off-highway motor vehicle
17 not otherwise registered and the off-highway user fee, of which
18 five dollars (\$5.00) is appropriated to the division to defray
19 the cost of making and issuing registration certificates,
20 validating stickers and nonresident permits for off-highway
21 motor vehicles. The remaining twelve dollars (\$12.00) shall be
22 deposited in the motor vehicle suspense fund for distribution
23 pursuant to Section 66-6-23 NMSA 1978;

24 D. except as provided in Paragraph (3) of
25 Subsection C of this section, each registration certificate and

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1 nonresident permit shall be:

2 (1) good for two years after the month in
3 which the off-highway motor vehicle is registered or the permit
4 is issued; and

5 (2) renewed every two years;

6 E. the off-highway user fee for each off-highway
7 motor vehicle shall be paid upon obtaining and renewing each
8 registration certificate or nonresident permit;

9 F. duplicate registration certificates and
10 nonresident permits shall be issued upon payment of a
11 seven-dollar-fifty-cent (\$7.50) fee, which is appropriated to
12 the division to defray the cost of making and issuing duplicate
13 registration certificates and nonresident permits for off-
14 highway motor vehicles;

15 G. a fee of one dollar (\$1.00) on registration
16 certificates and nonresident permits shall be collected for the
17 litter control and beautification fund; and

18 H. the ~~[tourism]~~ department, in conjunction with
19 ~~[the division and the department of game and fish]~~ other
20 agencies and departments, may establish and maintain sites to
21 collect fees and issue permits for residents and nonresidents."

22 Section 3. Section 66-3-1010.1 NMSA 1978 (being Laws
23 2005, Chapter 325, Section 9) is amended to read:

24 "66-3-1010.1. OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING
25 ORGANIZATION--APPROVAL AND CERTIFICATION.--

.177248.4

1 A. An off-highway motor vehicle safety training
 2 organization that offers and conducts an off-highway motor
 3 vehicle safety training course shall be approved and certified
 4 by the [~~board~~] department. Applicants for approval and
 5 certification shall submit an application to the [~~board~~]
 6 department for consideration.

7 B. The [~~board~~] department may approve and certify
 8 an organization that meets the minimum criteria established by
 9 the [~~board~~] department for an off-highway motor vehicle safety
 10 training organization. Each approval and certification shall
 11 be renewed annually."

12 Section 4. Section 66-3-1010.2 NMSA 1978 (being Laws
 13 2005, Chapter 325, Section 10) is amended to read:

14 "66-3-1010.2. OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--
 15 REQUIREMENTS--ISSUANCE.--A person under the age of eighteen
 16 shall be required to successfully complete an off-highway motor
 17 vehicle safety training course for which the person shall have
 18 parental permission. The course shall be conducted by an off-
 19 highway motor vehicle safety training organization that is
 20 approved and certified by the [~~board~~] department. Upon
 21 successful completion of the course, the person shall receive
 22 an off-highway motor vehicle safety permit issued by the
 23 organization."

24 Section 5. Section 66-3-1010.3 NMSA 1978 (being Laws
 25 2005, Chapter 325, Section 11) is amended to read:

.177248.4

1 "66-3-1010.3. OPERATION AND EQUIPMENT--SAFETY
2 REQUIREMENTS.--

3 A. A person shall not operate an off-highway motor
4 vehicle:

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

7 (2) while under the influence of intoxicating
8 liquor or drugs as provided by Section 66-8-102 NMSA 1978;

9 (3) while in pursuit of and with intent to
10 hunt or take a species of animal or bird protected by law
11 unless otherwise authorized by the state game commission;

12 (4) in pursuit of or harassment of livestock
13 in any manner that negatively affects the livestock's
14 condition;

15 (5) on or within an earthen tank or other
16 structure meant to water livestock or wildlife;

17 (6) in a manner that has a direct negative
18 effect on or interferes with persons engaged in agricultural
19 practices;

20 [~~4~~] (7) in excess of ten miles per hour
21 within two hundred feet of a business, animal shelter,
22 horseback rider, bicyclist, pedestrian, livestock or occupied
23 dwelling, unless the person operates the vehicle on a closed
24 course or track;

25 [~~5~~] (8) unless in possession of the person's

.177248.4

1 registration certificate or nonresident permit;

2 [~~(6)~~] (9) unless the vehicle is equipped with
3 a spark arrester approved by the United States forest service;
4 provided that a snowmobile is exempt from this provision;

5 [~~(7)~~] (10) when conditions such as darkness
6 limit visibility to five hundred feet or less, unless the
7 vehicle is equipped with:

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

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

14 ~~(8)~~] (11) that produces noise that exceeds
15 ninety-six decibels when measured using test procedures
16 established by the society of automotive engineers pursuant to
17 standard J-1287; or

18 (12) where off-highway motor vehicle traffic
19 is prohibited under local, state or federal rules or
20 regulations.

21 B. A person under the age of eighteen shall not
22 operate an off-highway motor vehicle:

23 (1) or ride upon an off-highway motor vehicle
24 without wearing eye protection and a safety helmet that is
25 securely fastened in a normal manner as headgear and that meets

.177248.4

1 the standards established by the [board] department;

2 (2) without an off-highway motor vehicle
3 safety permit; or

4 (3) while carrying a passenger.

5 C. A person under the age of eighteen but at least
6 ten years of age shall not operate an off-highway motor vehicle
7 unless the person is visually supervised at all times by a
8 parent, legal guardian or a person over the age of eighteen who
9 has a valid driver's license. This subsection shall not apply
10 to a person who is at least:

11 (1) thirteen years of age and has a valid
12 motorcycle license and off-highway motor vehicle safety permit;
13 or

14 (2) fifteen years of age and has a valid
15 driver's license, instructional permit or provisional license
16 and off-highway motor vehicle safety permit.

17 D. A person under the age of ten shall not operate
18 an off-highway motor vehicle unless:

19 (1) the all-terrain vehicle or recreational
20 off-highway vehicle is an age-appropriate size-fit vehicle
21 established by rule of the [board] department; and

22 (2) the person is visually supervised at all
23 times by a parent, legal guardian or instructor of a safety
24 training course certified by the [board] department.

25 ~~[E. The requirements of Subsections C and D of this~~

1 ~~section do not apply to a person who is part of an organized~~
 2 ~~tour under the guidance or direction of a guide certified by~~
 3 ~~the board.~~

4 F.] E. An off-highway motor vehicle [~~may~~] shall not
 5 be sold or offered for sale if the vehicle produces noise that
 6 exceeds ninety-six decibels when measured using test procedures
 7 established by the society of automotive engineers pursuant to
 8 standard J-1287. This subsection shall not apply to an off-
 9 highway motor vehicle that is sold or offered for sale only for
 10 organized competition."

11 Section 6. Section 66-3-1010.5 NMSA 1978 (being Laws
 12 2005, Chapter 325, Section 13) is amended to read:

13 "66-3-1010.5. REQUIREMENTS OF DEALERS TO DISTRIBUTE
 14 SAFETY INFORMATION.--A dealer selling off-highway motor
 15 vehicles shall distribute information [~~recommended~~] provided by
 16 the [~~board~~] department to off-highway motor vehicle purchasers
 17 on state laws, environmental and cultural considerations,
 18 customs, safety requirements, training programs, operating
 19 characteristics and potential risk of injury associated with
 20 off-highway motor vehicles."

21 Section 7. Section 66-3-1011 NMSA 1978 (being Laws 1975,
 22 Chapter 240, Section 11, as amended) is amended to read:

23 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS--PROHIBITED
 24 AREAS.--

25 A. A person shall not operate an off-highway motor

.177248.4

1 vehicle on any:

2 (1) limited access highway or freeway at any
3 time; or

4 (2) any paved street or highway except as
5 provided in Subsection B of this section.

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

13 C. A person shall not operate an off-highway motor
14 vehicle on state game commission-owned, -controlled or
15 -administered land except as specifically allowed pursuant to
16 Chapter 17, Article 6 NMSA 1978.

17 D. A person shall not operate an off-highway motor
18 vehicle on land owned, controlled or administered by the state
19 parks division of the energy, minerals and natural resources
20 department, pursuant to Chapter 16, Article 2 NMSA 1978, except
21 in areas designated by and permitted by rules adopted by the
22 secretary of energy, minerals and natural resources.

23 E. Unless authorized, a person shall not:

24 (1) remove, deface or destroy any official
25 sign installed by a state, federal, local or private land

.177248.4

1 management agency; or

2 (2) install any off-highway motor vehicle-
3 related sign."

4 Section 8. 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.--A wildlife conservation
7 officer, state police officer or peace officer of this state or
8 any of its political subdivisions, upon displaying the
9 officer's badge of office, has the authority to enforce the
10 provisions of the Off-Highway Motor Vehicle Act and may:

11 A. require an off-highway motor vehicle operator to
12 produce:

13 (1) the registration certificate or
14 nonresident permit;

15 (2) proof of successful completion of an off-
16 highway motor vehicle training course conducted by an off-
17 highway safety training organization approved and certified by
18 the ~~[board]~~ department, when required by Section ~~[10 of this~~
19 ~~2005 act]~~ 66-3-1010.2 NMSA 1978; and

20 (3) the personal identification of the
21 operator; and

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

24 Section 9. Section 66-3-1017 NMSA 1978 (being Laws 2005,
25 Chapter 325, Section 19) is amended to read:

.177248.4

1 "66-3-1017. OFF-HIGHWAY MOTOR VEHICLE [SAFETY] ADVISORY
2 BOARD CREATED--MEMBERS--COMPENSATION.--

3 [A. ~~The "off-highway motor vehicle safety board" is~~
4 ~~created. The board consists of the following nine ex-officio~~
5 ~~members or their designees and seventeen appointed members:~~

6 (1) ~~the director of the department of game and~~
7 ~~fish;~~

8 (2) ~~the director of the motor vehicle~~
9 ~~division;~~

10 (3) ~~the secretary of transportation;~~

11 (4) ~~the secretary of public safety;~~

12 (5) ~~the commissioner of public lands;~~

13 (6) ~~the secretary of energy, minerals and~~
14 ~~natural resources;~~

15 (7) ~~the secretary of tourism;~~

16 (8) ~~the secretary of health;~~

17 (9) ~~the director of the state parks division~~
18 ~~of the energy, minerals and natural resources department;~~

19 (10) ~~one member of the New Mexico department~~
20 ~~of agriculture appointed by the board of regents of New Mexico~~
21 ~~state university;~~

22 (11) ~~one representative from each of the~~
23 ~~state's six tourism regions with expertise in off-highway motor~~
24 ~~vehicle safety or motorized and non-motorized recreation, two~~
25 ~~of whom are appointed by the secretary of health, two of whom~~

.177248.4

1 ~~are appointed by the secretary of tourism and two of whom are~~
 2 ~~appointed by the secretary of energy, minerals and natural~~
 3 ~~resources, to include at least one member of:~~

4 ~~(a) a recognized off-highway motorcycle~~
 5 ~~user group;~~

6 ~~(b) an all-terrain vehicle user group;~~
 7 ~~and~~

8 ~~(c) a snowmobile user group;~~

9 ~~(12) three representatives from local law~~
 10 ~~enforcement agencies appointed by the secretary of public~~
 11 ~~safety;~~

12 ~~(13) two representatives from a conservation~~
 13 ~~or environmental organization appointed by the secretary of~~
 14 ~~energy, minerals and natural resources;~~

15 ~~(14) two off-highway motor vehicle dealers~~
 16 ~~appointed by the secretary of tourism;~~

17 ~~(15) one health professional with expertise in~~
 18 ~~injury prevention or treatment appointed by the secretary of~~
 19 ~~health;~~

20 ~~(16) one representative from the United States~~
 21 ~~bureau of land management appointed by the governor; and~~

22 ~~(17) one representative from the United States~~
 23 ~~forest service appointed by the governor.~~

24 ~~B. The board shall select a chairperson, a vice~~
 25 ~~chairperson and other officers as it deems necessary.~~

.177248.4

1 C. ~~The board shall meet at the call of the~~
2 ~~chairperson but not less than twice annually. A majority of~~
3 ~~members constitutes a quorum for the transaction of business.~~
4 ~~The affirmative vote of at least a majority of the quorum~~
5 ~~present shall be necessary for an action to be taken by the~~
6 ~~board.~~

7 D. ~~Members shall be appointed to staggered terms of~~
8 ~~two years each; provided that no more than nine terms expire in~~
9 ~~any one year. The ex-officio board members shall select by lot~~
10 ~~nine appointed members to serve initial terms of three years~~
11 ~~each. A vacancy shall be filled by appointment by the original~~
12 ~~appointing authority for the remainder of the unexpired term.~~

13 E. ~~Appointed members, except for representatives of~~
14 ~~federal agencies, of the board are entitled to reimbursement~~
15 ~~for attending meetings of the board as provided for nonsalaried~~
16 ~~officers in the Per Diem and Mileage Act and shall receive no~~
17 ~~other compensation, perquisite or allowance.]~~

18 A. The "off-highway motor vehicle advisory board"
19 is created to advise the department on matters related to
20 administration of the Off-Highway Motor Vehicle Act. The board
21 shall consist of the following eleven members appointed by the
22 governor to serve terms at the governor's discretion:

23 (1) two landowners living near a national
24 forest or bureau of land management property that is used
25 extensively for recreational off-highway vehicle activity;

- 1 (2) one grazing permittee on public lands;
- 2 (3) one producer from the farming or livestock
- 3 industry;
- 4 (4) two off-highway motor vehicle users;
- 5 (5) one hunter and one angler;
- 6 (6) two quiet recreationalists, such as
- 7 hikers, backpackers, birdwatchers, equestrians, mountain
- 8 bikers, rock climbers or archaeological enthusiasts; and
- 9 (7) one member of an Indian nation, tribe or
- 10 pueblo.

11 B. The board shall select a chair and a vice chair.

12 C. The board shall meet at the call of the chair
13 but not less than twice annually.

14 D. Members of the board shall be entitled to
15 reimbursement pursuant to the Per Diem and Mileage Act."

16 Section 10. Section 66-3-1018 NMSA 1978 (being Laws 2005,
17 Chapter 325, Section 20) is amended to read:

18 "66-3-1018. [~~BOARD~~] DEPARTMENT--POWERS AND DUTIES.--

19 A. The [~~board may~~] department shall cooperate with
20 appropriate federal agencies, public and private organizations
21 and corporations and local government units to implement the
22 provisions of the Off-Highway Motor Vehicle Act.

23 B. The [~~board shall~~] department:

24 (1) shall accept and evaluate all applications
25 for approval and certification of an off-highway motor vehicle

.177248.4

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1 safety training organization and approve and certify those that
2 meet the minimum criteria;

3 (2) shall notify the division of the off-
4 highway motor vehicle safety training organizations that have
5 received approval and certification;

6 (3) shall establish and revise as appropriate
7 minimum criteria [~~by January 1, 2007~~] to approve and certify an
8 off-highway motor vehicle safety training organization. The
9 criteria shall include requirements for curriculum and
10 materials for:

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

13 (b) training the public about
14 off-highway motor vehicle safety and age-appropriate size-fit
15 use of off-highway motor vehicles; and

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

22 (4) shall implement [~~by January 1, 2007~~] a
23 state off-highway motor vehicle safety training and
24 certification program;

25 (5) shall adopt and promulgate rules regarding

1 the:

2 (a) age-appropriate size-fit use of all-
3 terrain vehicles or recreational off-highway motor vehicles;

4 (b) acceptance or accreditation of
5 instruction or safety courses provided by other states; and

6 (c) standards covering the
7 specifications of eye protection and safety helmets;

8 (6) may recommend, with public participation
9 and input, off-highway motor vehicle park, facility and trail
10 locations to the state, county, tribal or local governing body
11 or private entity that owns or administers the land upon which
12 the park, facility or trail is located. The [~~board~~] department
13 shall establish criteria to recommend locations that include
14 consideration of off-highway motor vehicle operating laws and
15 effects on:

16 (a) wildlife and the environment;

17 (b) adjacent state, county, federal,
18 tribal and private property;

19 (c) other recreational and
20 nonrecreational uses on the same or adjacent lands; and

21 (d) archaeological, cultural and
22 historic resources and customs;

23 (7) shall recommend restoration or, if deemed
24 necessary, closure of off-highway motor vehicle tracks or
25 trails to the state, county, tribal or local governing body or

.177248.4

1 private entity that owns or administers the land upon which the
2 tracks or trails are located if they pose significant or
3 irreversible environmental damage, a danger to users or a
4 public nuisance as determined by the ~~[board]~~ department. The
5 ~~[board]~~ department shall consider the construction of
6 alternative tracks or trails as part of the closure process;

7 (8) shall accept and evaluate all applications
8 for grants from the fund ~~[and make recommendations to the~~
9 ~~tourism department]~~ for implementation of the provisions of the
10 Off-Highway Motor Vehicle Act. The ~~[board]~~ department shall
11 establish criteria for grants from the fund that include
12 consideration of the:

13 (a) applicant's financial and legal
14 status;

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

19 (c) operating budget for the park,
20 trail, facility or staging area;

21 (d) availability of matching funds; and

22 (e) public participation and input;

23 ~~[and]~~

24 (9) shall certify tour guides;

25 (10) shall prepare a management plan that

1 accomplishes the purposes of the Off-Highway Motor Vehicle Act
2 in a cost-effective manner and relies on existing agencies'
3 available funding with specific qualifications for program
4 implementation, which shall include joint powers agreements
5 with the department of public safety and other law enforcement
6 agencies for law enforcement and other agencies as appropriate
7 for carrying out the provisions of the Off-Highway Motor
8 Vehicle Act;

9 (11) shall develop and implement an overall
10 enforcement strategy for the entire state that includes:

11 (a) cooperation with federal, state and
12 local law enforcement agencies to provide training and
13 educational materials related to off-highway motor vehicle use;

14 (b) coordination efforts related to
15 off-highway motor vehicle use with participating law
16 enforcement agencies;

17 (c) developing strategies for addressing
18 and resolving impacts on farmers and ranchers in rural
19 agricultural areas and on non-motorized recreationists by
20 off-highway motor vehicle use; and

21 (d) using law enforcement DUI-type
22 "blitzes" in heavily used areas, staging areas or other problem
23 areas;

24 (12) shall develop and implement an overall
25 educational strategy for the entire state that:

.177248.4

1 (a) incorporates materials developed by
2 the United States department of agriculture forest service
3 program that teaches trail etiquette and respect for natural
4 resources;

5 (b) includes the development of New
6 Mexico-specific written, video or other educational materials
7 and educational programs that address the impact of off-highway
8 motor vehicles on traditional living culture, agricultural land
9 and private property; and

10 (c) includes the development and
11 maintenance of a web site containing rules and regulations,
12 safety information and educational material relating to
13 resource protection and the impact of off-highway motor
14 vehicles on traditional living culture, agricultural land and
15 historical sites;

16 (13) shall develop an overall strategy for
17 phased implementation of an information system to track
18 information, such as use patterns, injury data, ecological
19 data, natural resource data and data relating to the impact of
20 off-highway motor vehicles on traditional living culture and on
21 agricultural land. The strategy shall include:

22 (a) identification and implementation of
23 appropriate data collecting mechanisms, such as a toll-free
24 number or a web-based data collecting process; and

25 (b) development of an information system

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1 program capable of interfacing with existing government and
2 private databases or other information systems;

3 (14) may implement noise enforcement by the
4 testing of sound levels of off-highway motor vehicles at the
5 time of registration and equip law enforcement officers with
6 sound meters for field testing of sound levels;

7 (15) may contract with government or quasi-
8 government agencies to conduct analysis of the impact of
9 off-highway motor vehicle use on forests, rangeland and other
10 natural resources and use the data obtained to make
11 recommendations to the appropriate land management agency;

12 (16) shall review the definition of
13 "off-highway motor vehicle" as needed to include new classes of
14 off-highway motor vehicles as they become available in the
15 marketplace;

16 (17) shall, in cooperation with the division,
17 determine the size, composition, attachment mechanism, letter
18 or number height and other properties of off-highway motor
19 vehicle identification. This identification may be a
20 traditional license plate, stick-on lettering as used for boat
21 identification or another form of identification that is
22 visible and readable;

23 (18) shall present its semiannual plans and
24 progress to the advisory board for the board's input and
25 response; and

.177248.4

1 (19) may collaborate with the appropriate land
2 agencies to develop criteria for signage relating to off-road
3 motor vehicle use, including the size, visibility, graphics and
4 frequency of signage."

5 Section 11. Section 66-3-1019 NMSA 1978 (being Laws 2005,
6 Chapter 325, Section 21) is amended to read:

7 "66-3-1019. FUND CREATED--DISPOSITION.--

8 A. The "trail safety fund" is created in the state
9 treasury. The fund is a nonreverting fund and consists of
10 revenues from off-highway motor vehicle registration and user
11 fees, grants and donations. No more than thirty percent of the
12 fund may be used for administrative overhead, and at least
13 fifty percent shall be devoted to law enforcement and
14 education. Income from investment of the fund shall be
15 credited to the fund. The fund shall be administered by the
16 [~~tourism~~] department, and money in the fund is appropriated to
17 the [~~tourism~~] department to carry out the purposes of the Off-
18 Highway Motor Vehicle Act. Expenditures from the fund shall be
19 by warrant of the secretary of finance and administration upon
20 vouchers signed by the [~~secretary of tourism or the~~
21 ~~secretary's~~] director of the department of game and fish or the
22 director's authorized representative.

23 ~~[B. The tourism department, upon recommendation by~~
24 ~~the board, shall make distributions from the fund to develop~~
25 ~~and maintain trails, build and maintain staging areas, market~~

.177248.4

1 ~~safety programs and promote safety for off-highway motor~~
2 ~~vehicles.]~~

3 B. The department shall make annual distributions
4 from the fund for the following purposes:

5 (1) administrative;

6 (2) law enforcement;

7 (3) education and training;

8 (4) information system development and
9 management;

10 (5) resource monitoring and protection and
11 trail building, maintenance and restoration; and

12 (6) implementation of other provisions of the
13 Off-Highway Motor Vehicle Act."

14 Section 12. Section 66-3-1020 NMSA 1978 (being Laws 2005,
15 Chapter 325, Section 22) is amended to read:

16 "66-3-1020. PENALTIES.--

17 A. ~~[Unless the violation is declared a felony, a~~
18 ~~petty misdemeanor or a citation under the Motor Vehicle Code]~~ A
19 person who violates the provisions of the Off-Highway Motor
20 Vehicle Act is guilty of a penalty assessment misdemeanor
21 ~~[pursuant to Section 66-8-7 NMSA 1978].~~ A parent, guardian or
22 custodian who causes or knowingly permits a child under the age
23 of eighteen years to operate an off-highway motor vehicle in
24 violation of the provisions of the Off-Highway Motor Vehicle
25 Act is in violation of that act and subject to the same penalty

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underscored material = new
[bracketed material] = delete

1 as the child operating the off-highway motor vehicle in
2 violation of that act.

3 B. [~~When a person is convicted of a felony or~~
4 ~~misdemeanor committed while operating an off-highway motor~~
5 ~~vehicle, the court may order the person to complete a~~
6 ~~board-certified safety training course] As used in the Off-
7 Highway Motor Vehicle Act, "penalty assessment misdemeanor"
8 means violation of any provision of the Off-Highway Motor
9 Vehicle Act for which a violator may be subject to the
10 following:~~

<u>CLASS 1 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
	<u>VIOLATED</u>	<u>ASSESSMENT</u>
<u>failure to possess a</u> <u>registration certificate</u>		
<u>or nonresident permit</u>	<u>66-3-1010.3</u>	<u>\$10.00</u>
<u>violations involving</u>		
<u>headlights or taillights</u>	<u>66-3-1010.3</u>	<u>10.00</u>
<u>failure to possess an off-</u> <u>highway motor vehicle</u>		
<u>safety permit</u>	<u>66-3-1010.3</u>	<u>10.00</u>
<u>operating a vehicle that is</u>		
<u>not equipped with an approved</u>		
<u>spark arrester</u>	<u>66-3-1010.3</u>	<u>10.00</u>
<u>selling a vehicle that produces</u>		
<u>noise in excess of ninety-six</u>		

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[bracketed material] = delete

1	<u>decibels</u>	<u>66-3-1010.3</u>	<u>10.00</u>
2	<u>any violation of the Off-Highway</u>		
3	<u>Motor Vehicle Act not otherwise</u>		
4	<u>specifically defined elsewhere</u>		
5	<u>in this section</u>	<u>66-3-1010.3</u>	<u>10.00</u>
6	<u>CLASS 2 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
7		<u>VIOLATED</u>	<u>ASSESSMENT</u>
8	<u>failure to complete a required</u>		
9	<u>off-highway motor vehicle</u>		
10	<u>safety training course</u>	<u>66-3-1010.2</u>	<u>\$50.00</u>
11	<u>operating a vehicle in excess</u>		
12	<u>of ten miles per hour within</u>		
13	<u>two hundred feet of a business,</u>		
14	<u>animal shelter, horseback</u>		
15	<u>rider, bicyclist, pedestrian,</u>		
16	<u>livestock or occupied</u>		
17	<u>dwelling</u>	<u>66-3-1010.3</u>	<u>50.00</u>
18	<u>a person under the age of</u>		
19	<u>eighteen but at least</u>		
20	<u>fifteen years of age who</u>		
21	<u>operates an off-highway</u>		
22	<u>motor vehicle in violation</u>		
23	<u>of the supervision requirements</u>		
24	<u>of the Off-Highway Motor</u>		
25	<u>Vehicle Act</u>		<u>50.00</u>

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1	<u>operating an off-highway motor</u>		
2	<u>vehicle that produces noise</u>		
3	<u>that exceeds ninety-six</u>		
4	<u>decibels</u>	<u>66-3-1010.3</u>	<u>50.00</u>
5	<u>unauthorized installation,</u>		
6	<u>removal, destruction or</u>		
7	<u>defacing of a motor</u>		
8	<u>vehicle sign</u>	<u>66-3-1011</u>	<u>50.00</u>
9	<u>CLASS 3 VIOLATIONS</u>	<u>SECTION</u>	<u>PENALTY</u>
10		<u>VIOLATED</u>	<u>ASSESSMENT</u>
11	<u>operating an off-highway</u>		
12	<u>motor vehicle while in</u>		
13	<u>pursuit of and with</u>		
14	<u>intent to hunt or take</u>		
15	<u>a species of animal or bird</u>		
16	<u>protected by law, unless</u>		
17	<u>otherwise authorized by</u>		
18	<u>the state game commission</u>	<u>66-3-1010.3</u>	<u>\$100.00</u>
19	<u>operating an off-highway</u>		
20	<u>motor vehicle in pursuit of</u>		
21	<u>or harassment of livestock</u>		
22	<u>in any manner that negatively</u>		
23	<u>affects the livestock's</u>		
24	<u>condition</u>	<u>66-3-1010.3</u>	<u>100.00</u>
25	<u>operating an off-highway</u>		

.177248.4

1	<u>motor vehicle on or within</u>		
2	<u>an earthen tank or other</u>		
3	<u>structure meant to water</u>		
4	<u>livestock or wildlife</u>	<u>66-3-1010.3</u>	<u>100.00</u>
5	<u>operating a motor vehicle</u>		
6	<u>in a manner that has a</u>		
7	<u>direct negative effect on</u>		
8	<u>or interferes with persons</u>		
9	<u>engaged in agricultural</u>		
10	<u>practices</u>	<u>66-3-1010.3</u>	<u>100.00</u>
11	<u>a person under the age of</u>		
12	<u>eighteen operating an</u>		
13	<u>off-highway motor vehicle</u>		
14	<u>without wearing eye</u>		
15	<u>protection and a safety</u>		
16	<u>helmet</u>	<u>66-3-1010.3</u>	<u>100.00</u>
17	<u>a person under the age of</u>		
18	<u>eighteen operating an</u>		
19	<u>off-highway motor vehicle</u>		
20	<u>while carrying a passenger</u>	<u>66-3-1010.3</u>	<u>100.00</u>
21	<u>a person under the age of</u>		
22	<u>fifteen but at least ten</u>		
23	<u>years of age who operates</u>		
24	<u>an off-highway motor vehicle</u>		
25	<u>in violation of the supervision</u>		

.177248.4

1 requirements of the Off-Highway
2 Motor Vehicle Act 100.00

3 a person under the age of
4 ten operating an all-terrain
5 vehicle or recreational off-highway
6 motor vehicle that is not an
7 age-appropriate size-fit or
8 who operates an off-highway
9 motor vehicle in violation
10 of the supervision requirements

11 of this section 66-3-1010.3 100.00

12 CLASS 4 VIOLATIONS SECTION PENALTY
13 VIOLATED ASSESSMENT

14 operating an off-highway
15 motor vehicle in a
16 careless, reckless or
17 negligent manner so as
18 to endanger the person
19 or property of another 66-3-1010.3 \$200.00

20 operating an off-highway
21 motor vehicle on any road
22 or area closed to off-
23 highway motor vehicle
24 traffic under local, state
25 or federal regulations 66-3-1010.3 200.00

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underscoring material = new
[bracketed material] = delete

1 operating an off-highway
2 motor vehicle on a
3 limited-access highway
4 or freeway. 66-3-1011 200.00.

5 C. The penalty for second, third and subsequent
6 violations within a three-year time period shall be increased
7 as follows:

8 (1) a second violation in a class 1 penalty
9 category involving the operation of an off-highway motor
10 vehicle that is not equipped with an authorized spark arrester
11 or failure to possess a registration certificate or nonresident
12 permit shall be increased to a class 2 penalty category;

13 (2) any class 2 or class 3 violation for a
14 second or greater infraction within a three-year period shall
15 be increased to the next-highest penalty assessment category;
16 and

17 (3) each subsequent violation in a class 4
18 penalty category will result in an additional penalty of two
19 hundred dollars (\$200).

20 D. Multiple violations for the same incident shall
21 be treated as a single event and shall not result in graduated
22 penalties.

23 E. If the violation involved significant resource
24 damage, riding in designated wilderness areas or other
25 restricted areas or interference with the livelihood of an

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1 individual engaged in agriculture, the fines are doubled.

2 F. The term "penalty assessment misdemeanor" does
3 not include a violation that has caused or contributed to the
4 cause of an accident resulting in injury or death to a person.

5 G. When an alleged violator of a penalty assessment
6 misdemeanor elects to accept a notice to appear in lieu of a
7 notice of penalty assessment, a fine imposed upon later
8 conviction shall not exceed the penalty assessment established
9 for the particular penalty assessment misdemeanor, and
10 probation imposed upon a suspended or deferred sentence shall
11 not exceed ninety days."

12 Section 13. A new section of the Off-Highway Motor
13 Vehicle Act is enacted to read:

14 "[NEW MATERIAL] LEGISLATIVE OVERSIGHT.--In addition to
15 reporting to the legislative finance committee pursuant to the
16 performance review and budgeting process, the department shall
17 report to the appropriate interim committee appointed by the
18 New Mexico legislative council on the status of implementation
19 of the Off-Highway Motor Vehicle Act. The department shall
20 report to the appropriate committee of the legislature on the
21 status of existing and proposed rules and relevant enforcement
22 issues."

23 Section 14. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
24 PROPERTY, CONTRACTS, RECORDS AND APPROPRIATIONS.--On July 1,
25 2009, all records, personnel, appropriations, money, equipment,

.177248.4

1 supplies and other property of the tourism department pursuant
2 to administration and enforcement of the Off-Highway Motor
3 Vehicle Act shall be transferred to the department of game and
4 fish and all contracts pursuant to the Off-Highway Motor
5 Vehicle Act shall be binding and effective on the department of
6 game and fish.

7 Section 15. REPEAL.--Sections 66-3-1004.1 and 66-3-1016
8 NMSA 1978 (being Laws 2005, Chapter 325, Section 4 and Laws
9 1978, Chapter 35, Section 212, as amended) are repealed.

10 Section 16. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.