

2007 SENATE BILL 185

May 15, 2007 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Transportation, Tourism and Insurance.

1 **AN ACT** *to renumber and amend* 23.33 (2j) (c); *to amend* 20.566 (1) (hp), 23.33
2 (2) (c), 23.33 (2) (d), 23.33 (2) (dm) 2., 23.33 (3) (c), 23.33 (8) (a), 23.45 (1) (d),
3 350.10 (1) (f) and 350.11 (1) (a) and (b); *to repeal and recreate* 25.29 (1) (dm);
4 and *to create* 20.370 (1) (et), 20.370 (5) (cz), 23.175 (5t), 23.33 (2) (am), 23.33
5 (2d), 23.33 (2j) (c) 2., 23.33 (8m), 23.33 (13) (aw), 23.33 (13) (g), 71.10 (5i) and
6 350.10 (2w) of the statutes; **relating to:** trespass by operators of snowmobiles,
7 all-terrain vehicles, and other off-road vehicles; increasing the appropriations
8 for certain all-terrain vehicle programs; fees for registration of all-terrain
9 vehicles for public and private use, fees for commercial all-terrain vehicle
10 certificates, and fees for nonresident all-terrain vehicle trail passes; creating
11 an all-terrain vehicle damage claim program; the all-terrain vehicle gas tax
12 payment; promulgation of rules to establish standards and procedures for
13 certifying the designation of all-terrain vehicle routes and trails; the display
14 of all-terrain vehicle registration numbers; creating an individual income tax

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1 checkoff for trails that are not open to motorized vehicles; creating a
2 nonmotorized trails program; requiring a certificate of title for an all-terrain
3 vehicle; granting rule-making authority; requiring the exercise of rule-making
4 authority; making an appropriation; and providing penalties.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State Trails Policy. The key provisions of the draft are as follows:

All-terrain vehicle trail certification rules

The bill requires the Department of Natural Resources (DNR) to promulgate administrative rules to establish standards and procedures for certifying the designation of all-terrain vehicle (ATV) routes and trails under the control of the department. The draft requires the department to consider the interests of the state trails council and other trail user groups when promulgating the rules.

ATV, snowmobile, and off-road vehicle trespass

The bill expands the current statute that prohibits trespass with an ATV, snowmobile, or off-road vehicle to apply to all property, rather than just private property, and increases the penalty for violation of the amended statute.

ATV damage claim program

The bill creates an ATV damage claim program under which an applicant may receive a payment for the repair or restoration of property damaged by the operation of ATVs in any area not designated as an ATV route or ATV trail.

Certificate of title for ATVs

The bill creates a requirement for the owner of an ATV to obtain a certificate of title. The titling requirement applies to the owner of a newly acquired ATV and to the owner of an ATV who applies for registration without holding a previously issued certificate of title. Any ATV that is exempt from registration in this state is also exempt from the titling requirement.

Display of ATV registration number

The bill creates a requirement for the operator of an ATV to display the registration number on an ATV that is registered for public use (i.e., for use on public trails or routes). DNR is required by this bill to specify the manner of displaying the registration number. The registration number must be displayed in a prominent manner and, at a minimum, must be displayed at the rear of the ATV.

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ATV gas tax payment

The bill repeals the current formula for the ATV gas tax payment, and replaces it with a new formula. The increased funds generated by the formula are paid to the conservation fund in DNR and are used to provide aid to towns, villages, cities, counties, and federal agencies for nonstate ATV projects.

ATV fee increases

The bill increases the following fees:

*The fee for issuance or renewal of a registration certificate for public use of an ATV.

*The fee for issuance of a registration certificate for private use of an ATV.

*The fee for issuance or renewal of a certificate for commercial use of an ATV.

*The annual fee for a nonresident ATV trail pass. The bill also creates a seven-day nonresident trail pass.

Appropriation changes

The bill increases the following appropriations:

*Funds for DNR to reroute a segment of the Ice Age Trail that currently allows the use of ATVs.

*Funds for DNR to provide aid to towns, villages, cities, counties, and federal agencies for nonstate ATV projects.

*Aid for local ATV law enforcement.

Income tax checkoff for nonmotorized trails

The bill creates a nonmotorized trail program, to be administered by DNR, and funded from the individual income tax checkoff for nonmotorized trails.

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

| | | | | 2007-08 | 2008-09 |
|---|---------------|---|----------|----------------|----------------|
| 3 | | | | | |
| 4 | 20.370 | Natural Resources, Department of | | | |
| 5 | (5) | CONSERVATION AIDS | | | |
| 6 | (cz) | Recreation aids — all-terrain | | | |
| 7 | | vehicle damage claims | SEG A | 30,000 | 30,000 |

8 **SECTION 2.** 20.370 (1) (et) of the statutes is created to read:

9 20.370 **(1)** (et) *Nonmotorized trails.* As a continuing appropriation, from
10 moneys received as amounts designated under s. 71.10 (5i) (i), the net amounts
11 certified under s. 71.10 (5i) (h) 3., for the nonmotorized trails program under s. 23.175
12 (5t).

13 **SECTION 3.** 20.370 (5) (cz) of the statutes is created to read:

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1 20.370 (5) (cz) *Recreation aids — all-terrain vehicle damage claims.* The
2 amounts in the schedule to pay claims under the all-terrain vehicle damage program
3 under s. 23.33 (8m).

4 **SECTION 4.** 20.566 (1) (hp) of the statutes is amended to read:

5 20.566 (1) (hp) *Administration of endangered resources; professional football*
6 *district; breast cancer research; fire fighters memorial; veterans trust fund; multiple*
7 *sclerosis programs; prostate cancer research income tax checkoff voluntary payments.*

8 The amounts in the schedule for the payment of all administrative costs, including
9 data processing costs, incurred in administering ss. 71.10 (5), (5e), (5f), (5fm), (5g),
10 (5h), (5i), and (5m), and 71.30 (10). All moneys specified for deposit in this
11 appropriation under ss. 71.10 (5) (h) 5., (5e) (h) 4., (5f) (i), (5fm) (i), (5g) (i), (5h) (i),
12 (5i) (i), and (5m) (i), and 71.30 (10) (i) and (11) (i) shall be credited to this
13 appropriation.

14 **SECTION 5.** 23.175 (5t) of the statutes is created to read:

15 23.175 (5t) NONMOTORIZED TRAIL PROGRAM. (a) The department shall use the
16 moneys appropriated under s. 20.370 (1) (et) for a nonmotorized trail program. The
17 department may use the moneys for any of the following:

- 18 1. The acquisition of state land for nonmotorized trail use.
- 19 2. The planning, establishment, development, construction, improvement, or
20 maintenance of nonmotorized trails on state land.
- 21 3. The awarding of grants to political subdivisions or nonprofit organizations
22 for the acquisition of lands to be used for nonmotorized trails that will be available
23 for public use.

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1 4. The awarding of grants to political subdivisions and nonprofit organizations
2 for the planning, establishment, development, construction, improvement, or
3 maintenance of nonmotorized trails that are available for public use.

NOTE: This provision creates a nonmotorized trail program, to be administered by the department of natural resources (DNR), and funded from the individual income tax checkoff for nonmotorized trails.

4 **SECTION 6.** 23.33 (2) (am) of the statutes is created to read:

5 23.33 (2) (am) *Registration for public use; display of registration number.* No
6 person may operate in this state an all-terrain vehicle that is registered for public
7 use under par. (a) unless the all-terrain vehicle has attached to it in a prominent
8 manner, as specified by the department by rule, the registration number assigned
9 to the all-terrain vehicle. The department shall require, at a minimum, display of
10 the registration number at the rear of the all-terrain vehicle.

NOTE: Under the current all-terrain vehicle (ATV) statutes, no person may operate or give permission to operate an ATV unless the ATV is registered for public use (i.e., for use on public trails or routes) or for private use (i.e., used exclusively on private property), or is exempt from registration, or is issued a commercial ATV certificate (i.e., manufacturers, dealers, or distributors, or persons engaged in the business of renting ATVs). Under current rules promulgated by DNR, a person who registers an ATV for public use must display two registration decals on the vehicle. The rules specify the size of the decals and the information required to be contained on the decals. DNR also designates authorized distributors of registration decals. Under the current statutes, there is no license plate or other requirement to display registration numbers on an ATV.

This bill creates a requirement for the operator to display the registration number on an ATV that is registered for public use. DNR is required by this bill to specify the manner of displaying the registration number. The registration number must be displayed in a prominent manner and at a minimum, must be displayed at the rear of the ATV.

11 **SECTION 7.** 23.33 (2) (c) of the statutes is amended to read:

12 23.33 (2) (c) *Registration; public use; fee.* Any all-terrain vehicle may be
13 registered for public use. The fee for the issuance or renewal of a registration
14 certificate for public use is \$30 \$50.

NOTE: Under current law, no person may operate, and no owner may give permission for the operation of, an ATV within the state of Wisconsin unless the ATV is

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registered for public use, private use, is exempt from registration, or is certified for commercial use.

This provision increases the fee for issuance or renewal of a registration certificate for public use of an ATV from \$30 to \$50. The registration is valid for two years.

Based on current DNR estimates that approximately 230,000 ATVs share a public registration (calculated at 115,000 registrations per year to generate the annual number), the current fee raises about \$3.5 million annually. Assuming the same 230,000 registrations, under this provision of the bill, the fee increase would raise approximately \$5.75 million annually. The result is an increase in revenue of approximately \$2.25 million annually.

1 **SECTION 8.** 23.33 (2) (d) of the statutes is amended to read:

2 23.33 **(2)** (d) *Registration; private use; fee.* An all-terrain vehicle used
3 exclusively for agricultural purposes or used exclusively on private property may be
4 registered for private use. The fee for the issuance of a registration certificate for
5 private use is ~~\$15~~ \$25.

NOTE: This provision increases the fee for issuance of a registration certificate for private use of an ATV from \$15 to \$25. The private registration is valid from initial purchase of the registration to the time that ownership is transferred.

DNR estimates that approximately 5,000 ATVs are registered for private use each year. The current fee of \$15 raises about \$75,000 annually. Assuming a continued 5,000 private registrations each year, the increased fee, at \$25, would raise approximately \$125,000 per year. The result is a revenue increase of approximately \$50,000 annually.

6 **SECTION 9.** 23.33 (2) (dm) 2. of the statutes is amended to read:

7 23.33 **(2)** (dm) 2. The fee for the issuance or renewal of a commercial all-terrain
8 vehicle certificate is ~~\$90~~ \$100. Upon receipt of the application form required by the
9 department and the fee required under this subdivision, the department shall issue
10 to the applicant a commercial all-terrain vehicle certificate and 3 reflectorized
11 plates. The fee for additional reflectorized plates is ~~\$30~~ \$40 per plate.

NOTE: This provision increases the fee for issuance or renewal of a certificate for commercial use of an ATV from \$90 to \$100. The commercial certificate is valid for two years.

Based on DNR estimates that approximately 650 ATVs are registered for commercial use annually, the fee currently raises about \$60,000 annually. Assuming the same 650 annual registrations in the future, under this provision of the bill, the new fee would raise approximately \$65,000 annually. This results in a revenue increase of about \$5,000 annually.

12 **SECTION 10.** 23.33 (2d) of the statutes is created to read:

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1 23.33 (2d) CERTIFICATE OF TITLE; REQUIREMENTS; EXCEPTIONS. (a) *Certificate*. The
2 owner of an all-terrain vehicle subject to registration in this state, whether or not
3 the all-terrain vehicle is operated in this state, shall make application for a
4 certificate of title for the all-terrain vehicle under any of the following
5 circumstances:

6 1. If the owner has newly acquired the all-terrain vehicle, he or she shall make
7 application under this subsection.

8 2. If the owner applies for registration of an all-terrain vehicle without holding
9 a valid certificate of title previously issued to that owner by the department for the
10 all-terrain vehicle, he or she shall at the same time apply for a certificate of title.

11 (b) *Exemptions*. An all-terrain vehicle is exempt from the certificate of title
12 requirements of this subsection if it is exempt under sub. (2) (b) from registration
13 requirements. The department may exempt additional classes of all-terrain
14 vehicles from the certificate of title requirements.

15 (c) *All-terrain vehicles purchased by nonresidents*. A nonresident who
16 purchases an all-terrain vehicle in this state and who intends to register the
17 all-terrain vehicle in another state is not required to apply for a certificate of title
18 under this chapter. A nonresident who purchases an all-terrain vehicle in this state
19 may apply for a certificate of title under this subsection.

20 (d) *Application for certificate of title*. An application for a certificate of title shall
21 be made to the department and shall be accompanied by the required fee. Each
22 application for certificate of title shall contain the information required by the
23 department.

24 (e) *Issuance; records; fees*. 1. The department shall file each application for
25 certificate of title received by it and, when satisfied as to its genuineness and

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1 regularity and that the applicant is entitled to the issuance of a certificate of title,
2 shall issue and deliver a certificate to the owner of the all-terrain vehicle.

3 2. The department shall file and retain for at least 5 years a record of all
4 applications for a certificate of title.

5 3. The department shall conduct a title search upon the request of an applicant
6 for a certificate of title.

7 4. The department shall by rule fix and collect fees that shall, as closely as
8 possible, equal the cost of providing services under this subsection.

9 (f) *Contents of certificate of title.* Each certificate of title issued by the
10 department shall contain information required by the department.

11 (g) *Law enforcement.* The department shall establish procedures for
12 identifying stolen all-terrain vehicles with the cooperation of local law enforcement
13 officials and the department of justice, by checking applications for title against any
14 lists of stolen all-terrain vehicles, inspecting serial numbers if the owner applies for
15 a replacement certificate of title, and inspecting all-terrain vehicles that are
16 purchased out of state.

17 (h) *Replacements; transfer of title.* The department shall establish procedures
18 and forms for the replacement of certificates of title and the transfer of title to an
19 all-terrain vehicle or the transfer of any interest in an all-terrain vehicle.

20 (i) *Alterations and falsifications prohibited.* 1. No person may intentionally
21 falsify a certificate of title issued under this subsection, or an application for a
22 certificate of title issued under the subsection.

23 2. No person may intentionally alter, remove, or change any number or other
24 character in an all-terrain vehicle engine serial number or all-terrain vehicle serial
25 number.

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1 (j) *Abandonment or destruction of all-terrain vehicle.* The department shall
2 promulgate rules establishing procedures that apply in the event of abandonment
3 or destruction of an all-terrain vehicle covered by a certificate of title or registration
4 issued by this state.

5 (k) *Security interests.* 1. A security interest in an all-terrain vehicle of a type
6 for which a certificate of title is required is not valid against creditors of the owner
7 or subsequent transferees or secured parties of the all-terrain vehicle unless
8 perfected as provided in rules promulgated by the department.

9 2. A secured party named in a certificate of title shall, upon written request of
10 the owner or of another secured party named on the certificate, disclose any
11 pertinent information about the secured party's security agreement and the
12 indebtedness secured by it.

13 3. An owner shall promptly deliver the certificate of title to any secured party
14 who is named on it or who has a security interest in the all-terrain vehicle described
15 in it under any applicable prior law of this state, upon receipt of a notice from the
16 secured party that the secured party's security interest is to be assigned, extended,
17 or perfected.

18 4. A secured party who fails to disclose information under subd. 2. shall be
19 liable to the owner for any loss caused by the failure to disclose.

20 5. An owner who fails to deliver the certificate of title to a secured party
21 requesting it under subd. 3. shall be liable to the secured party for any loss caused
22 to the secured party by the failure to deliver.

23 6. The method provided in this paragraph for perfecting and giving notice of
24 security interests subject this subsection is exclusive. Security interests subject to
25 this subsection are exempt from the provisions of law that otherwise require or relate

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1 to the filing of instruments creating or evidencing security interests. This
2 subdivision does not affect the validity of a security interest perfected before the
3 effective date of this subdivision [revisor inserts date].

4 (L) *Suspension or revocation of certificate of title.* 1. The department shall
5 suspend or revoke a certificate of title for an all-terrain vehicle if it finds any of the
6 following:

7 a. The certificate of title was fraudulently procured, erroneously issued, or
8 prohibited by law.

9 b. The all-terrain vehicle has been scrapped, dismantled, or destroyed.

10 c. A transfer of title is set aside by a court by order or judgment.

11 2. Suspension or revocation of a certificate of title does not, in itself, affect the
12 validity of a security interest noted on it.

13 3. When the department suspends or revokes a certificate of title, the owner
14 or person in possession of the certificate shall, within 5 days after receiving notice
15 of the suspension or revocation, mail or deliver the certificate to the department.

16 4. The department may seize and impound a certificate of title that is
17 suspended or revoked.

18 (m) *Grounds for refusing issuance of certificate of title.* The department shall
19 refuse issuance of a certificate of title if any required fee is not paid or if it has
20 reasonable grounds to believe that any of the following exists:

21 1. The person alleged to be the owner of the all-terrain vehicle is not the owner.

22 2. The application contains a false or fraudulent statement.

23 3. The applicant fails to furnish information or documents required by the
24 department.

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NOTE: This provision creates a requirement for the owner of an ATV to obtain a certificate of title. Any owner of an ATV that is subject to registration in this state must comply with the titling requirement. The titling requirement applies to the owner of a newly acquired ATV and to the owner of an ATV who applies for registration without holding a previously issued certificate of title. Any ATV that is exempt from registration in this state is also exempt from the titling requirement. Although nonresidents who register an ATV in another state are not required to apply for a certificate of title, a nonresident may choose to obtain a Wisconsin title for an ATV purchased in this state.

DNR is directed under this provision to implement the statute by promulgating administrative rules applicable to the procedures for application for a certificate of title, issuance of a certificate of title, recordkeeping, replacements, transfer of title, security interests, and all other provisions necessary for the titling program. DNR is directed to set and collect fees established by rule which shall, as closely as possible, equal the cost of providing services related to ATV titling. The funds collected by DNR will be placed in the conservation fund.

The effective date of this provision primarily relates to the commencement of the requirement to obtain a certificate of title. This effective date means that the owner of an ATV newly purchased on or after January 1, 2009, or the owner of an ATV who applies for registration on or after January 1, 2009, and does not have a valid certificate of title previously issued, must obtain a certificate of title for the ATV.

1 **SECTION 11.** 23.33 (2j) (c) of the statutes is renumbered 23.33 (2j) (c) 1. and
2 amended to read:

3 23.33 **(2j)** (c) 1. The fee for ~~a~~ an annual nonresident trail pass issued for an
4 all-terrain vehicle that is exempt from registration under sub. (2) (b) 2. is ~~\$17.25.~~
5 A \$44.25. An annual nonresident trail pass issued for such an all-terrain vehicle
6 may be issued only by the department and persons appointed by the department and
7 expires on June 30 of each year.

8 **SECTION 12.** 23.33 (2j) (c) 2. of the statutes is created to read:

9 23.33 **(2j)** (c) 2. The fee for a 7-day nonresident trail pass issued for an
10 all-terrain vehicle that is exempt from registration under sub. (2) (b) 2. is \$17.25.
11 A 7-day nonresident trail pass issued for such an all-terrain vehicle may be issued
12 only by the department and persons appointed by the department and expires 7 days
13 after issuance.

NOTE: These provisions increase the annual fee for a nonresident ATV trail pass to \$44.25 and establish a 7-day nonresident trail pass for a fee of \$17.25. The current statute requires DNR to collect an issuing fee of \$0.75 for issuing a nonresident ATV trail pass.

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These provisions result in a total fee for each annual and 7-day nonresident trail pass to \$45 and \$18, respectively. Based on current nonresident ATV trail pass sales estimates of 12,500 annually, the current fee raises approximately \$215,000 annually. Assuming, under the new fees, that 80% of the nonresidential ATV trail users will purchase a weekly pass and the remaining 20% of nonresident ATV trail users will purchase an annual pass, the weekly pass will raise approximately \$250,000 annually and the annual pass approximately \$63,000 annually. This results in total annual revenue of approximately \$313,000, an increase of approximately \$98,000 annually.

1 **SECTION 13.** 23.33 (3) (c) of the statutes is amended to read:

2 23.33 **(3)** (c) On the ~~private~~ property of another without the consent of the
3 owner or lessee. Failure to post ~~private~~ such property does not imply consent for
4 all-terrain vehicle use. This paragraph does not apply to the right-of-way of a public
5 highway.

NOTE: This provision in current statutes is part of the rules of operation for ATVs. This paragraph is preceded by an intro. that states: “No person may operate an all-terrain vehicle:”.

This bill expands the property that is subject to the prohibition by applying the prohibition to public property as well as private property. The bill does this by deleting “private” in the statute. This bill also creates an exception so that the expanded statute does not apply to a public highway right-of-way.

6 **SECTION 14.** 23.33 (8) (a) of the statutes is amended to read:

7 23.33 **(8)** (a) *Department authority.* The department shall encourage and
8 supervise a system of all-terrain vehicle routes and trails. The department ~~may~~
9 shall promulgate rules that establish standards and procedures for certifying the
10 designation of all-terrain vehicle routes and trails. In promulgating these rules, the
11 department shall consider the recommendations of the state trails council and any
12 other user groups with an interest in the various recreational uses of trails.

NOTE: Under current ATV statutes, DNR is directed to encourage and supervise a system of ATV routes and trails. To fulfill this charge, the statutes permit DNR to establish standards and procedures for certifying the designation (i.e., approval to receive state funds) of ATV routes and trails.

DNR has issued current standards and procedures for ATV use on department lands as guidance documents. This bill requires DNR to promulgate administrative rules to establish standards and procedures for certifying the designation of ATV routes and trails under the control of the department. By requiring the standards and procedures to be promulgated as rules, this bill will require public hearings on the current policies, and any changes to those policies, through the agency process for developing rules and the legislative administrative rule review process. Under this bill, the department must

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consider the interests of the state trails council and other trail user groups when promulgating the rules required under this section.

1 **SECTION 15.** 23.33 (8m) of the statutes is created to read:

2 **23.33 (8m) ALL-TERRAIN VEHICLE DAMAGE PROGRAM.** (a) The department shall
3 establish an all-terrain vehicle damage program to pay claims for the cost of
4 restoring property that is damaged by the operation of all-terrain vehicles. Any
5 person may submit a claim under this subsection.

6 (b) The department may pay a claim under this subsection only if all of the
7 following apply:

8 1. The damage to the property was caused by the operation of all-terrain
9 vehicles in an area not designated as an all-terrain vehicle route or all-terrain
10 vehicle trail.

11 2. The applicant reports to local law enforcement officers the trespass that
12 causes the damage.

13 3. The applicant makes reasonable efforts to identify the responsible individual
14 and obtain payment from the responsible individual.

15 4. The applicant makes reasonable efforts to prevent reoccurrence of the
16 damage.

17 (c) The department shall promulgate rules for eligibility and funding
18 requirements for the all-terrain vehicle damage claim program in order to maximize
19 the cost-effectiveness of the program. The department shall promulgate rules to
20 establish all of the following:

21 1. Forms and procedures for processing and payment of claims, including an
22 annual period for making claims.

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1 2. Procedures and standards for determining the cost to restore all-terrain
2 vehicle damage.

3 3. A methodology for proration of all-terrain vehicle damage claim payments
4 if funds are not sufficient to pay all claims.

5 4. Procedures for record keeping, audits, and inspections.

6 5. Participation by local all-terrain vehicle clubs in the review of claims under
7 this subsection.

8 (d) The department may not submit a claim under this subsection in any
9 annual claim year unless all approved claims other than the department's claims are
10 paid in full.

NOTE: There is no ATV damage claim program under current law. If a person's property is damaged by the operation of an ATV in an area not designated for ATV use, the only remedy would be through court-ordered restitution as the judgment in a lawsuit.

This bill establishes an ATV damage claim program under which an applicant may receive a payment for the repair or restoration of property damaged by the operation of ATVs in any area not designated as an ATV route or ATV trail. The provision requires DNR to promulgate rules for implementation of the program. The provision requires the department to verify that certain minimum standards are met regarding the awarding of the payments. These standards include:

1. That the damage to the property was caused by the operation of ATVs in an area not designated as an ATV route or ATV trail.

2. That the applicant reports the trespass and makes reasonable efforts to identify the responsible individual and obtain payment from the individual.

3. That the applicant makes reasonable efforts to prevent reoccurrence of the damage.

DNR may submit a claim only if all eligible claims in an annual payment cycle are paid in full.

11 **SECTION 16.** 23.33 (13) (aw) of the statutes is created to read:

12 **23.33 (13) (aw)** *Penalty related to operation on the property of another.* A person
13 who violates s. 23.33 (3) (c) shall forfeit not less than \$250 and not more than \$1,000.

NOTE: The current statutes contain a general provision on trespass to land in s. 943.13. This statute prohibits any person from entering the land of another without the express or implied consent of the owner or occupant, or remaining on the land of another after being notified to leave. This statute applies whether or not the person is in a vehicle, and therefore would apply to trespass by a person who is operating an ATV, snowmobile, or other off-road vehicle. The penalty for violation of this statute is a Class B forfeiture, which is a civil penalty of a forfeiture not to exceed \$1,000. The trespass statute is enforced by local law enforcement authorities. Wardens of DNR do not have authority

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to enforce the trespass statute. The trespass statute is enforced by a citation system, similar to that for a traffic citation. The judicial conference sets the actual amount of the bond for violations of the trespass statute, and the basic deposit amount that has been set by the judicial conference is \$100. The statutes impose a variety of other surcharges on the basic amount, with the result that the total deposit amount for a person who pleads no contest to a trespass citation is \$249.

The current statutes also have provisions regarding entry onto the private property of another without the consent of the owner or lessee, when operating an ATV, snowmobile, or other off-road vehicle. The current penalty for violation of these statutes is a forfeiture not to exceed \$250. The judicial conference has also set the amount of the deposit for these violations at \$100, with a total deposit for the citation of \$249. This statute is enforced by DNR wardens.

This SECTION of the bill increases the penalty for violation of the current statute that prohibits trespass with an ATV to a forfeiture of not less than \$250 and not more than \$1,000. If the judicial conference sets the deposit amount at the minimum of \$250, the total deposit for this violation would be \$438.

It is also possible that the district attorney could issue a complaint and summons and seek a forfeiture up to the maximum of \$1,000.

1 **SECTION 17.** 23.33 (13) (g) of the statutes is created to read:

2 23.33 **(13)** (g) *All-terrain vehicle falsification.* Any person who violates sub.
3 (2d) (i) is guilty of a Class H felony.

NOTE: The new provision in this bill related to creating an ATV titling program contains a prohibition on the intentional falsification of either a certificate of title, or an application for a certificate of title, and the intentional authorization, removal, or change of any number or character in an ATV engine serial number or ATV serial number. This provision makes violation of those prohibitions a Class H felony. The maximum penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both.

4 **SECTION 18.** 23.45 (1) (d) of the statutes is amended to read:

5 23.45 **(1)** (d) “Registration” means any registration documentation, as defined
6 in s. 23.33 (1) (jn) or s. 350.01 (10t), certificate of title documentation under s. 23.33
7 (2d), or certification or registration documentation, as defined in s. 30.50 (3b), issued
8 by the department or its agents.

9 **SECTION 19.** 25.29 (1) (dm) of the statutes is repealed and recreated to read:

10 25.29 **(1)** (dm) An amount equal to the estimated all-terrain vehicle gas tax
11 payment. The estimated all-terrain vehicle gas tax payment is the sum of the
12 following amounts:

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1 1. An amount calculated by multiplying the number of all-terrain vehicles
2 registered under s. 23.33 (2) (c) or (2g) and the number of reflectorized plates issued
3 under s. 23.33 (2) (dm) on the last day of February of the previous fiscal year by 50
4 gallons and multiplying that product by the excise tax imposed under s. 78.01 (1) on
5 the last day of February of the previous fiscal year.

6 2. An amount equal to 40 percent of the amount calculated under subd. 1.

NOTE: This provision repeals the current ATV gas tax formula, and replaces it with a new formula. The funds generated by the formula are paid to DNR conservation fund and are used to provide aid to towns, villages, cities, counties, and federal agencies for nonstate ATV projects.

The current gas tax payment is calculated by multiplying the sum of the number of ATVs registered for public use and the number of reflectorized plates issued for commercial ATV use on the last day of February of the previous fiscal year. This number is multiplied by 25 gallons and that product is multiplied by the excise tax on the last day of February of the previous fiscal year (currently, \$0.309 per gallon).

The provision in this SECTION replaces the current formula for ATVs with a formula similar to the snowmobile gas tax payment. The new ATV gas tax payment, created by this bill, is calculated by multiplying the number of ATVs registered for public use and the number of reflectorized plates issued for commercial ATV use on the last day of February of the previous fiscal year by 50 gallons and multiplying that product by the motor vehicle fuel excise tax on the last day of February of the previous fiscal year. This total is then increased by an additional 40%.

Based on DNR estimates of approximately 230,000 public ATV registrations, and assuming that those registrations will not increase, the current fee raises about \$1.7 million annually. Assuming the same 230,000 registrations, the fee increase in this provision of the bill would raise approximately \$5 million annually. The result is an increase in revenue of approximately \$3.3 million annually.

7 **SECTION 20.** 71.10 (5i) of the statutes is created to read:

8 **71.10 (5i)** NONMOTORIZED TRAILS PROGRAM CHECKOFF; NONMOTORIZED VEHICLES.

9 (a) *Definitions.* In this subsection:

10 1. “Department” means the department of revenue.

11 2. “Nonmotorized trails program” means the program under s. 23.175 (5t) that
12 provides money for trails that are not open to motorized vehicles and the payment
13 of administrative expenses related to the administration of this subsection.

14 (b) *Voluntary payments.* 1. ‘Designation on return.’ Every individual filing an
15 income tax return who has a tax liability or is entitled to a tax refund may designate

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1 on the return any amount of additional payment or any amount of a refund due that
2 individual for the nonmotorized trails program.

3 2. ‘Designation added to tax owed.’ If the individual owes any tax, the
4 individual shall remit in full the tax due and the amount designated on the return
5 for the nonmotorized trails program when the individual files a tax return.

6 3. ‘Designation deducted from refund.’ Except as provided in par. (d), if the
7 individual is owed a refund for that year after crediting under ss. 71.75 (9) and 71.80
8 (3) and (3m), the department shall deduct the amount designated on the return for
9 the nonmotorized trails program from the amount of the refund.

10 (c) *Errors; failure to remit correct amount.* If an individual who owes taxes fails
11 to remit an amount equal to or in excess of the total of the actual tax due, after error
12 corrections, and the amount designated on the return for the nonmotorized trails
13 program:

14 1. The department shall reduce the designation for the nonmotorized trails
15 program to reflect the amount remitted in excess of the actual tax due, after error
16 corrections, if the individual remitted an amount in excess of the actual tax due, after
17 error corrections, but less than the total of the actual tax due, after error corrections,
18 and the amount originally designated on the return for the nonmotorized trails
19 program.

20 2. The designation for the nonmotorized trails program is void if the individual
21 remitted an amount equal to or less than the actual tax due, after error corrections.

22 (d) *Errors; insufficient refund.* If an individual is owed a refund that does not
23 equal or exceed the amount designated on the return for the nonmotorized trails
24 program, after crediting under ss. 71.75 (9) and 71.80 (3) and (3m) and after error
25 corrections, the department shall reduce the designation for the nonmotorized trails

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1 program to reflect the actual amount of the refund that the individual is otherwise
2 owed, after crediting under ss. 71.75 (9) and 71.80 (3) and (3m) and after error
3 corrections.

4 (e) *Conditions.* If an individual places any conditions on a designation for the
5 nonmotorized trails program, the designation is void.

6 (f) *Void designation.* If a designation for the nonmotorized trails program is
7 void, the department shall disregard the designation and determine amounts due,
8 owed, refunded, and received without regard to the void designation.

9 (g) *Tax return.* The secretary of revenue shall provide a place for the
10 designations under this subsection on the individual income tax return.

11 (h) *Certification of amounts.* Annually, on or before September 15, the
12 secretary of revenue shall certify to the department of natural resources, the
13 department of administration, and the state treasurer all of the following:

14 1. The total amount of the administrative costs, including data processing
15 costs, incurred by the department in administering this subsection during the
16 previous fiscal year.

17 2. The total amount received from all designations for the nonmotorized trails
18 program made by taxpayers during the previous fiscal year.

19 3. The net amount remaining after the administrative costs, including data
20 processing costs, under subd. 1. are subtracted from the total received under subd.

21 2.

22 (i) *Appropriations, disbursement of funds.* From the moneys received from
23 designations for the nonmotorized trails program, an amount equal to the sum of
24 administrative expenses, including data processing costs, certified under par. (h) 1.
25 shall be deposited into the general fund and credited to the appropriation account

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1 under s. 20.566 (1) (hp), and the net amount remaining that is certified under par.
2 (h) 3. shall be credited to the appropriation account under s. 20.370 (1) (et), for the
3 use specified under s. 23.175 (5t).

4 (j) *Amounts subject to refund.* Amounts designated for the nonmotorized trails
5 program under this subsection are not subject to refund to the taxpayer unless the
6 taxpayer submits information to the satisfaction of the department, within 18
7 months after the date on which the taxes are due or the date on which the return is
8 filed, whichever is later, that the amount designated is clearly in error. Any refund
9 granted by the department under this paragraph shall be deducted from the moneys
10 received under this subsection in the fiscal year for which the refund is certified.

11 **SECTION 21.** 350.10 (1) (f) of the statutes is amended to read:

12 350.10 (1) (f) On the private property of another without the consent of the
13 owner or lessee. Failure to post private such property does not imply consent for
14 snowmobile use. Any other motor-driven craft or vehicle principally manufactured
15 for off-highway use shall at all times have the consent of the owner before operation
16 of such craft or vehicle on ~~private lands~~ the property of another. This paragraph does
17 not apply to the right-of-way of a public highway.

NOTE: This provision of the current statutes is part of the statutes related to snowmobile operation. This paragraph is preceded by an intro. that states: "No person shall operate a snowmobile in the following manner:". This provision is not limited to snowmobiles, but applies also to other "motor-driven craft or vehicle principally manufactured for off-highway use". This bill expands the property that is subject to the prohibition by applying the prohibition to public property as well as private property. The bill does this by deleting "private" in the statute. This bill also creates an exception so that the expanded statute does not apply to a public highway right-of-way.

18 **SECTION 22.** 350.10 (2w) of the statutes is created to read:

19 350.10 (2w) A person who violates s. 350.10 (1) (f) shall forfeit not less than
20 \$250 and not more than \$1,000.

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NOTE: This provision changes the penalty for violation of the prohibition on operating a snowmobile or other motor-driven craft or vehicle on the property of another from a forfeiture of not to exceed \$250 to a minimum forfeiture of \$250 and a maximum forfeiture of \$1,000. For additional information on trespass, see the note following the amendment to s. 23.33 (13) (aw).

1 **SECTION 23.** 350.11 (1) (a) and (b) of the statutes are amended to read:

2 350.11 **(1)** (a) Except as provided in par. (b) and subs. (2g), (2m), ~~(2w)~~, and (3),
3 any person who violates any provision of this chapter shall forfeit not more than
4 \$250.

5 (b) Except as provided in subs. (2g), (2m), ~~(2w)~~, and (3), any person who violates
6 any provision of this chapter and who, within the last 3 years prior to the conviction
7 for the current violation, was 2 or more times previously convicted for violating the
8 same provision of this chapter shall forfeit not more than \$500.

9 **SECTION 24. Nonstatutory provisions.**

10 (1) EMERGENCY RULES ON ALL-TERRAIN VEHICLE CLAIMS. Using the procedure
11 under section 227.24 of the statutes, the department of natural resources shall
12 promulgate the rules required under section 23.33 (8m) of the statutes, as created
13 by this act, for the period before the effective date of the permanent rule promulgated
14 under section 23.33 (8m) of the statutes, as created by this act, but not to exceed the
15 period authorized under section 227.24 (1) (c) and (2) of the statutes.
16 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
17 of natural resources is not required to provide evidence that promulgating a rule
18 under this subsection as an emergency rule is necessary for the preservation of the
19 public peace, health, safety, or welfare and is not required to provide a finding of
20 emergency for a rule promulgated under this subsection.

21 **SECTION 25. Fiscal changes.**

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1 (1) STATE ALL-TERRAIN VEHICLE TRAIL PROJECTS. In the schedule under section
2 20.005 (3) of the statutes for the appropriation to the department of natural
3 resources under section 20.370 (1) (ms) of the statutes, as affected by the acts of 2007,
4 the dollar amount is increased by \$250,000 for fiscal year 2007–08 and the dollar
5 amount is increased by \$250,000 for fiscal year 2008–09 for rerouting the Ice Age
6 Trail segment that is affected by the Wild Rivers State Trail and the Tuscobia State
7 Trail.

NOTE: The appropriation increase provides funds for DNR to reroute a segment of
the Ice Age Trail which is now part of two trails, the Wild River State Trail and the
Tuscobia State Trail, that allow the use of ATVs.

8 (2) ALL-TERRAIN VEHICLE PROJECT AIDS. In the schedule under section 20.005 (3)
9 of the statutes for the appropriation to the department of natural resources under
10 section 20.370 (5) (cu) of the statutes, as affected by the acts of 2007, the dollar
11 amount is increased by \$2,300,000 for fiscal year 2007–08 and the dollar amount is
12 increased by \$2,300,000 for fiscal year 2008–09 to provide aid to towns, villages,
13 cities, counties, and federal agencies for nonstate all-terrain vehicle projects.

NOTE: The current appropriation for nonstate ATV projects is \$1,600,000 in fiscal
year 2005–06 and \$1,600,000 in fiscal year 2006–07.

14 (3) ALL-TERRAIN VEHICLE ENFORCEMENT. In the schedule under section 20.005 (3)
15 of the statutes for the appropriation to the department of natural resources under
16 section 20.370 (5) (er) of the statutes, as affected by the acts of 2007, the dollar
17 amount is increased by \$300,000 for fiscal year 2007–08 and the dollar amount is
18 increased by \$300,000 for fiscal year 2008–09 to provide aid for local all-terrain
19 vehicle law enforcement.

NOTE: The current appropriation for local law enforcement aids is \$200,000 in
fiscal year 2005–06 and \$200,000 in fiscal year 2006–07.

20 **SECTION 26. Initial applicability.**

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1 (1) **NONMOTORIZED TRAILS PROGRAM.** The treatment of sections 20.566 (1) (hp)
2 and 71.10 (5i) of the statutes first applies to taxable years beginning on January 1
3 of the year in which this subsection takes effect, except that if this subsection takes
4 effect after July 31 this act first applies to taxable years beginning on January 1 of
5 the year following the year in which this subsection takes effect.

6 (2) **ALL-TERRAIN VEHICLE DAMAGE PROGRAM.** The treatment of section 23.33 (8m)
7 of the statutes first applies to claims filed on the effective date of this subsection.

8 (3) **TRESPASS.** The treatment of sections 23.33 (3) (c) and (13) (aw), 350.10 (1)
9 (f) and (2w), and 350.11 (1) (a) and (b) of the statutes first applies to violations that
10 occur on the effective date of this subsection.

11 (4) **REGISTRATION FEES.** The treatment of section 23.33 (2) (c), (d), and (dm) 2.
12 of the statutes first applies to all-terrain vehicle registration certificates issued or
13 renewed on the effective date of this subsection.

14 (5) **TRAIL PASS FEES.** The renumbering and amendment of section 23.33 (2j) (c)
15 of the statutes and the creation of section 23.33 (2j) (c) 2. of the statutes first apply
16 to nonresident trail passes issued or renewed on January 1, 2009.

17 **SECTION 27. Effective dates.** This act takes effect on the day after
18 publication, except as follows:

19 (1) The treatment of sections 20.370 (1) (et), 20.566 (1) (hp), 23.175 (5t), and
20 71.10 (5i) of the statutes and SECTIONS 24 and 26 (1) of this act take effect on the day
21 after publication, or on the 2nd day after publication of the 2007–09 biennial budget
22 act, whichever is later.

23 (2) The treatment of s. 20.370 (5) (cz) of the statutes and SECTION 1 of this act
24 take effect on the first day of the 12th month beginning after publication.

