

ATVS AND LOCAL ROADS

A legislative amendment to the definition of an all-terrain vehicle (ATV), enacted this past session, has resulted in numerous towns being petitioned to open roads to ATV travel.

The amendment clarifies what sections of the motor vehicle statutes apply to ATVs when they are operated on public highways. With their status on public highways now governed more clearly by state law, ATV owners are now more comfortable asking for permission to be on those highways. As a result, selectboards are facing decisions that have the potential to become quite controversial – this is an issue that tends to split citizens into opposing camps.

If your selectboard is petitioned, it is imperative that it is aware of the board's authority to allow and to regulate the operation of ATVs on municipal roads.

For starters, ATV use along public highways is prohibited unless:

1. The highway is not being maintained during the snow season; or,
2. The highway has been opened to all-terrain vehicle travel by the local legislative body and is so posted by the municipality. Signage must consistent with the *Manual of Uniform Traffic Control Devices* standards as required in 23 V.S.A. § 1025. (23 V.S.A. §3506)

The only exception to ATV use prohibition along public roads is if the ATV is being used for agricultural purposes, and is operated not closer than three feet from the traveled portion of any highway for the sole purpose of traveling within the confines of a farm. 23 V.S.A. § 3506(b)(1).

However, there is more to the story of legally operating on public highways than simply opening the roads. Specifically, in order for an ATV to legally operate on a road that is open to ATV use, the ATV must be registered and have:

1. One or more working headlights;
2. A red rear light which works, both of which must be on during operation 30 minutes after sunset to 30 minutes before sunrise;
3. A number plate bracket;
4. Brakes in good mechanical condition;
5. A United States Forest Service qualified spark arrester; and
6. A muffler system that produces a noise level of not more than 82 decibels on the A scale at 50 feet. (23 V.S.A. § 3505)

In addition to the above requirements, an individual who is less than 18 years of age may not operate an ATV on a public highway open to ATV use unless:

1. the operator is taking a prescribed safety education training course and operating under the direct supervision of a certified all-terrain vehicle safety instructor; or
2. the operator holds an appropriate safety education certificate issued by Vermont or issued under the authority of another state or province of Canada.
 - a. A person who is required to hold an appropriate safety education certificate as stated above, must exhibit the safety education certificate

upon demand of a law enforcement officer having the authority to enforce 23 V.S.A. Chapter 31.

3. An individual that is less than 12 years old must meet the same requirements above and be under the direct supervision of a person at least 18 years old. (23 V.S.A. § 3506)

Beyond the requirements set forth in the Vermont statutes, municipalities also have the authority to regulate the time, manner, location or operation of all-terrain vehicles in their jurisdiction. However, in order to do so, the selectboard must adopt a municipal ordinance and the ordinance must be consistent with state law (23 V.S.A. §§ 3210, 3510). If you would like guidance in preparing an ordinance, or a copy of a model ATV ordinance, please contact the VLCT Municipal Assistance Center.

Even though municipalities do have the authority to regulate ATVs as described above, municipal officials should be aware of the difficulties most municipalities are experiencing enforcing the provisions of 23 V.S.A. Chapter 31 and their ATV ordinances. Unfortunately, according to legislative testimony, some ATV operators easily elude law enforcement, trespass on private land, illegally operate on public lands and display a general disregard for law enforcement and the rights of individuals to reasonably enjoy the use of their property.

Considering ATV use on public roads and lands is a contentious issue. VLCT strongly encourages municipalities to actively solicit public input anytime there is a petition to open or close public highways to ATV use. Without doing so, it is possible that those who oppose the selectboard's action will petition for a permissive referendum under 24 V.S.A. § 1973 in order to disapprove the action. To potentially avoid such a situation, a municipality may find it beneficial to seek mediation or facilitation services so that a consensus resolution can be reached before an ordinance is adopted. If your municipality is interested in learning how mediation or facilitation services may help you address ATV-related issues or others, please contact the Municipal Assistance Center at VLCT.

As an example of trying to find a consensus solution at the state level, Representative Frank Mazur, Chair of the House Transportation Committee, recently convened a group of stakeholders and concerned citizens to identify the problems each group faces regarding ATV use. Representative Mazur is hopeful that the problems discussed and solutions suggested will lead to legislation in the next session that is acceptable to all who are concerned.

Because any ATV legislation would impact a municipality's ability to regulate ATV use in its jurisdiction, VLCT will closely follow any proposed ATV legislation next year and keep you informed of any developments. Two ATV bills that were introduced last session, H. 4 and H. 177, will be alive next session and can be found on the State's legislative web page using the legislative bill tracking system. The address for the State's legislative homepage is: <http://www.leg.state.vt.us/>. Or, local officials may contact Todd Odit at 800/649-7915 or todit@vlct.org for a copy.

- *Todd Odit, Associate, VLCT Legislative and Membership Services*
VLCT News, August 2003