

**2013 DRAFTING REQUEST**

**Bill**

Received: 1/17/2014 Received By: eshea  
Wanted: As time permits Same as LRB: -3055  
For: Eric Genrich (608) 266-0616 By/Representing: Steven Peters  
May Contact: Drafter: eshea  
Subject: Nat. Res. - parks and forestry Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Genrich@legis.wisconsin.gov  
Carbon copy (CC) to: elisabeth.shea@legis.wisconsin.gov

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Use of state trails at nighttime

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	eshea 1/17/2014	scalvin 1/21/2014	rschluet 1/22/2014	_____	sbasford 1/22/2014	lparisi 2/3/2014	

FE Sent For:

<END>

NOT  
NEEDED

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### Topic:

Use of state trails at nighttime ✓

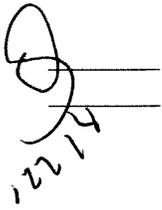
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### Instructions:

See attached

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/1	eshea	/1 sac 01/21/2014	/1 sac 01/21/2014				

FE Sent For:

<END>

## Shea, Elisabeth

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**From:** Peters, Steve  
**Sent:** Friday, January 17, 2014 2:49 PM  
**To:** Shea, Elisabeth  
**Subject:** RE: Trail Hours Bill

Lis,

That should be fine then. DNR was just concerned about recreational trails and snowmobile trails being confused but as long as it looks like it makes legal sense which one we are referring to, it's good.

Thanks

Steve

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**From:** Shea, Elisabeth  
**Sent:** Friday, January 17, 2014 2:42 PM  
**To:** Peters, Steve  
**Subject:** RE: Trail Hours Bill

Hi Steve,

I'll work on incorporating item 1. However, I don't think item 2 is necessary. "State trail" is currently defined in NR 45.03 (22) as "a recreational trail designated by the department under s. NR 51.73." This definition applies throughout chapter NR 45. Let me know if you think a change is still necessary.

Lis

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**From:** Peters, Steve  
**Sent:** Thursday, January 16, 2014 3:46 PM  
**To:** Shea, Elisabeth  
**Subject:** FW: Trail Hours Bill

Below are the changes we were looking to make for the Assembly companion for LRB 3055.

For point 1, I am not sure what is the most elegant way to put that into language. We want to make sure that the partners who operate the trails have the same abilities as the department as it relates to trails.

Let me know if you have any questions.

Thanks,

Steve

Steven Peters  
Office of Representative Eric Genrich  
304W State Capitol

608-266-0617

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**From:** Perchinsky, Dan  
**Sent:** Thursday, January 16, 2014 2:39 PM  
**To:** Peters, Steve  
**Subject:** FW: Trail Hours Bill

Here you go Steve.

**Dan Perchinsky**  
*Legislative Aide*  
*Office of Representative Rob Swearingen*  
*34<sup>th</sup> Assembly District*  
*608-266-7141*

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**From:** Bruhn, Michael L - DNR [<mailto:Michael.Bruhn@wisconsin.gov>]  
**Sent:** Friday, December 20, 2013 4:47 PM  
**To:** Perchinsky, Dan; Swearingen, Rob  
**Subject:** Trail Hours Bill

Rep. Swearingen and Dan,

Below are comments from our State Trails coordinator regarding the legislation on regulating the hours of use on state trails. Please let me know if you need anything additional.

Thanks!!

Michael Bruhn  
Legislative Liaison  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 266-5375  
(✉) e-mail: [michael.bruhn@wisconsin.gov](mailto:michael.bruhn@wisconsin.gov)  
Website: [dnr.wi.gov](http://dnr.wi.gov)  
Find us on Facebook: [www.facebook.com/WIDNR](http://www.facebook.com/WIDNR)

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**From:** Brown, Brigit E - DNR  
**Sent:** Friday, December 20, 2013 4:39 PM  
**To:** Bruhn, Michael L - DNR  
**Subject:** RE: Swearingen Draft

Thanks Mike. Sorry I didn't catch it the first time you sent it. My comments on the proposed changes to NR 45:

1. Can we get confirmation that our local trail cooperators can still post state trails as closed (i.e. that it doesn't have to be closed by the department but that our trail operators, with whom we have a written agreement and easement to allow them to manage and operate the trail, can also post open/closed hours as they see fit). The current language names the department as doing the posting ("...except during hours of closure as posted by the department."). Another solution would be to change the proposed language to something like "Users of state trails, except during hours of closure as posted.") This is an important issue to some of our trail partners and we would not want them to lose their management authority on that issue.

X I'm also thinking that we might want to cite the "state trails" referred to here to avoid confusion with trails that are owned by the department but are not part of the state trail system, or are funded by the state such as local snowmobile trails which are sometimes referred to as "state snowmobile trails". The trails in the state trail system (i.e. those trails intended to be affected by this rule change) are listed in NR 51.73 (1).

So, ultimately, Line 17 & 18 of page 6 could read something like:

NR 45.04 (2) (a) 5. (which will become NR 45.04 (2) (a) 4. with the repeal of number 3.)

Uses of state trails, as listed in NR 51.73 (1), except during hours of closure as posted.

Thanks,

-Brigit

Brigit E. Brown  
State Trails Coordinator  
101 S. Webster Street, Box 7921  
Madison, WI 53707-7921  
608-266-2183

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State of Wisconsin  
2013 - 2014 LEGISLATURE

In 1-17-14



LRB-3055/P1

4032/1

EHS:sac:m

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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SOON

CHANGES  
on pg. 6

gen cat

1 **AN ACT to amend** 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)  
 2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)  
 3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and **to create** 13.92 (4) (bm) and  
 4 227.265 of the statutes; **relating to:** rule-making procedures and modifying  
 5 and repealing various rules promulgated by the Department of Natural  
 6 Resources.

***Analysis by the Legislative Reference Bureau***

***Rule-making procedures***

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.
2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.
3. Subject to certain exceptions, a public hearing is held on the proposed rule.
4. The final draft of the proposed rule is submitted to the governor for approval.
5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are

submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

### ***Closing hours***

Under current law, the Department of Natural Resources (DNR) designates a system of state trails as part of the state park system. Under DNR's current rules, with certain exceptions, no person may enter or be within the boundaries of any state park between the hours of 11:00 p.m. and the following 6:00 a.m. The bill amends DNR rules to exempt users of state trails from these nighttime closing hours, but allows DNR discretion to close a state trail or portion of a state trail at night by posting notice of closing hours.

Current law requires, with certain exceptions, that state parks be open to hunting, fishing, and trapping by persons who hold the appropriate hunting, fishing, or trapping license, permit, or other approval. Under current DNR rules, one exception to state park closing hours is for hunters who enter the land no earlier than one hour before the opening of hunting hours on that land. This bill amends DNR rules to add a similar exception for trappers entering land no earlier than one hour prior to the opening of trapping hours on the land. If there are no established hunting hours on the land, the bill amends DNR rules to allow hunters to enter no earlier than one hour prior to sunrise.

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

- 1           **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:  
2           13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.  
3           227.265 affect the same unit of the Wisconsin administrative code without taking  
4           cognizance of the effect thereon of the other rules and if the legislative reference  
5           bureau finds that there is no mutual inconsistency in the changes made by each such  
6           rule, the legislative reference bureau shall incorporate the changes made by each  
7           rule into the text of the unit and document the incorporation in a note to the unit.

1 For each such incorporation, the legislative reference bureau shall include in a  
2 correction bill a provision formally validating the incorporation. Section 227.27 (2)  
3 is not affected by printing decisions made by the legislative reference bureau under  
4 this paragraph.

5 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

6 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin  
7 administrative code a note explaining any change made under par. (b) or (bm).

8 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

9 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not  
10 apply to any change made by the legislative reference bureau under par. (b) or (bm).

11 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

12 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a  
13 record of each change made under par. (b) or (bm).

14 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

15 13.92 (4) (f) The legislative reference bureau shall notify the agency involved  
16 of each change made under par. (b) or (bm).

17 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,  
18 is amended to read:

19 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau  
20 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the  
21 preceding register, including emergency rules filed under s. 227.24 (3).

22 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,  
23 is amended to read:

1           35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been  
2 affected by rules filed with legislative reference bureau under s. 227.20 (1) or  
3 modified under s. 227.265, in accordance with sub. (3) (e) 1.

4           **SECTION 8.** 35.93 (3) of the statutes is amended to read:

5           35.93 (3) The legislative reference bureau shall compile and deliver to the  
6 department for printing copy for a register which shall contain all the rules filed  
7 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the  
8 preceding issue of the register was made and those executive orders which are to be  
9 in effect for more than 90 days or an informative summary thereof. The complete  
10 register shall be compiled and published before the first day of each month and a  
11 notice section of the register shall be compiled and published before the 15th day of  
12 each month. Each issue of the register shall contain a title page with the name  
13 “Wisconsin administrative register”, the number and date of the register, and a table  
14 of contents. Each page of the register shall also contain the date and number of the  
15 register of which it is a part in addition to the other necessary code titles and page  
16 numbers. The legislative reference bureau may include in the register such  
17 instructions or information as in the bureau’s judgment will help the user to correctly  
18 make insertions and deletions in the code and to keep the code current.

19           **SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin  
20 Act 20, is amended to read:

21           35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the  
22 appropriate chapters of the Wisconsin administrative code each permanent rule filed  
23 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265  
24 and, for each chapter of the administrative code affected by a rule, do all of the  
25 following:

1           **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act  
2 20, is amended to read:

3           35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register  
4 in accordance with the filing deadline for publication established in the rules  
5 procedures manual published under s. 227.15 (7) or, in an end-of-month register  
6 agreed to by the submitting agency and the legislative reference bureau, or, in the  
7 case of a rule modified under s. 227.265, in the end-of-month register for the month  
8 in which the bill modifying the rule is enacted.

9           **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

10           227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy,  
11 or general order of general application which has the effect of law and which is issued  
12 by an agency to implement, interpret, or make specific legislation enforced or  
13 administered by the agency or to govern the organization or procedure of the agency.  
14 “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and  
15 s. 227.10 does not apply to, any action or inaction of an agency, whether it would  
16 otherwise meet the definition under this subsection, which:

17           **SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

18           227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency  
19 as follows:

20           **SECTION 13.** 227.265 of the statutes is created to read:

21           **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule  
22 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.  
23 Instead, the legislative reference bureau shall publish the repeal or modification in  
24 the Wisconsin administrative code and register as required under s. 35.93, and the  
25 repeal or modification shall take effect as provided in s. 227.22.

1 SECTION 14. 227.27 (2) of the statutes is amended to read:

2 227.27 (2) The code shall be prima facie evidence in all courts and proceedings  
3 as provided by s. 889.01, but this does not preclude reference to or, in case of a  
4 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~  
5 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy  
6 of a rule shall also and in the same degree be prima facie evidence in all courts and  
7 proceedings.

8 SECTION 15. NR 45.04 (2) (a) 2. of the administrative code is amended to read:

9 NR 45.04 (2) (a) 2. Hunters or trappers entering department lands with  
10 established during an open hunting seasons or trapping season on the land, provided  
11 the entry is no earlier than one hour prior to the opening of hunting or trapping hours  
12 established in s. NR 10.24 ch. NR 10. If the department has not established hunting  
13 hours on the land, hunters may enter the land no earlier than one hour prior to  
14 sunrise.

15 SECTION 16. NR 45.04 (2) (a) 3. of the administrative code is repealed.

16 SECTION 17. NR 45.04 (2) (a) 5. of the administrative code is created to read:

17 NR 45.04 (2) (a) 5. Users of state trails, except during hours of closure as posted

18 by the department, *or by an entity operating a state trail under a*  
*written agreement with the department*

19 SECTION 18. **Effective dates.** This act takes effect on the day after publication,

20 except as follows:

21 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.  
22 of the statutes takes effect on January 1, 2015.

23

(END)

**Parisi, Lori**

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**From:** Peters, Steve  
**Sent:** Monday, February 03, 2014 9:45 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -4032/1 Topic: Use of state trails at nighttime

Please Jacket LRB -4032/1 for the ASSEMBLY.