

# State of Wisconsin



2001 Senate Bill 58

Date of enactment: **August 17, 2001**

Date of publication\*: **August 31, 2001**

## 2001 WISCONSIN ACT 14

**AN ACT** *to repeal* 350.137 (3), 350.138 (8) (a) and 350.1395 (1) (a); *to renumber and amend* 350.138 (4), 350.138 (5), 350.138 (8) (b) and 350.1395 (2) (b); *to amend* 350.137 (1), 350.137 (2) (a), 350.138 (2), 350.138 (3), 350.138 (6), 350.138 (9), 350.139 (1) (a), 350.139 (3), 350.139 (4) (intro.), 350.139 (4) (a), 350.139 (4) (b), 350.139 (5), 350.1395 (title), 350.1395 (2) (a), 350.1395 (3) and 350.1395 (4) (b); *and to create* 195.03 (30), 195.307, 350.138 (2m), 350.138 (4) (a) 1., 2., 3. and 4., 350.138 (4) (b), 350.138 (4) (c), 350.138 (4) (d), 350.138 (4) (e), 350.138 (5) (b), 350.138 (5) (c), 350.1395 (2) (b) 2. and 350.1395 (2) (b) 3. of the statutes; **relating to:** the regulation of snowmobile rail crossings.

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

**SECTION 1.** 195.03 (30) of the statutes is created to read:

195.03 (30) HEARINGS. (a) The office shall give testimony at the hearing under s. 350.138 (4) (b), or shall submit a written report for introduction into the hearing record, on the factors stated in s. 350.138 (4) (d) 1., 2., 3., and 4.

(b) The office shall give the department of natural resources the office's opinion on whether the snowmobile crossing should be closed or removed in testimony at the hearing under s. 350.1395 (2) (b) 2. or in a written report for introduction into the hearing record.

**SECTION 2.** 195.307 of the statutes is created to read:

**195.307 Snowmobile rail crossings.** Sections 195.28, 195.285, 195.286, and 195.29 do not apply to snowmobile rail crossings for which a permit is issued under s. 350.138.

**SECTION 3.** 350.137 (1) of the statutes is amended to read:

350.137 (1) The department, after having consulted with the ~~snowmobile recreational council~~ each rail authority, as defined in s. 350.138 (1) (b), in this state, that has furnished the department with the information required under s. 350.138 (2m), an established snowmobile association that represents snowmobile clubs, as defined in s. 350.138 (1) (e), in this state, and the office of the commissioner of railroads, shall promulgate rules to establish uniform maintenance standards and uniform design and construction standards for snowmobile rail crossings under ss. 350.138 and 350.139.

**SECTION 4.** 350.137 (2) (a) of the statutes is amended to read:

350.137 (2) (a) Preclude the use of a proposed site for a snowmobile rail crossing because the site would be unsafe due to poor visibility of ~~the proposed snowmobile rail crossing from the cab of a railroad engine~~ an approaching train from the position of a snowmobile operator who is stopped on the approach to the proposed crossing.

**SECTION 5.** 350.137 (3) of the statutes is repealed.

**SECTION 6.** 350.138 (2) of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES 1999-00: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

350.138 (2) PERMIT REQUIRED. No person may construct a snowmobile rail crossing that is not located on a railroad crossing of a public highway or street unless the person is a snowmobile organization and has a permit approved issued under this section. No person may maintain a snowmobile rail crossing that is not located on a railroad crossing of a public highway or street unless the person is a snowmobile organization and either the person has a permit approved issued under this section or the snowmobile rail crossing is an established snowmobile rail crossing. In order to obtain a permit required under this section, a snowmobile organization shall apply to the department. A separate permit is required for each snowmobile rail crossing subject to this section.

**SECTION 7.** 350.138 (2m) of the statutes is created to read:

350.138 (2m) DESIGNATION OF AGENTS. Each rail authority with rail lines in this state shall furnish the department with the name and address of an agent who is authorized on behalf of the rail authority to receive copies of snowmobile crossing permit applications filed with the department. A rail authority that has rail lines in this state on the effective date of this subsection .... [revisor inserts date], shall furnish this information to the department within 30 days of the effective date of this subsection .... [revisor inserts date].

**SECTION 8.** 350.138 (3) of the statutes is amended to read:

350.138 (3) ~~CONTENTS OF PROCEDURES FOR PERMIT APPLICATION.~~ An application submitted under sub. (2) shall include adequate descriptions and drawings showing the proposed location of the snowmobile rail crossing, the design of the snowmobile rail crossing, and the location of snowmobile trails that connect with the snowmobile rail crossing. The department shall, upon receipt of an application submitted under sub. (2), send a copy of the application to the agent designated under sub. (2m) for the applicable rail authority and shall, immediately thereafter, send notice to the applicant that a copy of the application was sent to the designated agent. The notice to the applicant must include the name and address of the designated agent to whom the department sent a copy of the application. The department may reject an application within 15 days after it is submitted if the application is incomplete or is not sufficiently detailed to determine whether to approve or deny the application.

**SECTION 9.** 350.138 (4) of the statutes is renumbered 350.138 (4) (a) (intro.) and amended to read:

350.138 (4) (a) (intro.) ~~The Except as provided under par. (d), the department shall approve or deny an application submitted under sub. (2) within 60 days after receiving a complete and sufficiently detailed application. The department may deny an application only within 90 days after sending a copy of the application to the rail authority's designated agent under sub. (3) if the department determines that the proposed snowmobile rail crossing~~

~~does not comply with the rules promulgated under s. 350.137, all of the following conditions have been met:~~

**SECTION 10.** 350.138 (4) (a) 1., 2., 3. and 4. of the statutes are created to read:

350.138 (4) (a) 1. Within 30 days after the date on which the department sent a copy of the application to the applicable rail authority, the applicant provided to the applicable rail authority a written offer to discuss the advisability and feasibility of the proposed rail crossing.

2. The applicant furnished the department with a copy of the written offer provided to the applicable rail authority under subd. 1.

3. The rail authority did not file an objection with the department to the application within 60 days after receiving notice under sub. (3) or did not object, within that period, to a modification of the application as agreed to by the rail authority and the applicant.

4. The application complies with the rules promulgated under s. 350.137.

**SECTION 11.** 350.138 (4) (b) of the statutes is created to read:

350.138 (4) (b) The department shall hold a hearing on the application if the conditions under par. (a) 1., 2., and 4. are met, if the rail authority files with the department an objection to the application within 60 days after receiving notice under sub. (3), and if the objection contains all of the following:

1. A statement that, after discussing the advisability and feasibility of the proposed rail crossing with the applicant in good faith, the rail authority opposes the application.

2. A statement of the basis for the rail authority's objection.

**SECTION 12.** 350.138 (4) (c) of the statutes is created to read:

350.138 (4) (c) The department shall give notice of any hearing scheduled under par. (b) to the applicant, to the applicable rail authority, and to the office of the commissioner of railroads. The hearing shall be a contested case hearing under ch. 227. The department's order issuing or denying a permit is a final order subject to judicial review under ch. 227.

**SECTION 13.** 350.138 (4) (d) of the statutes is created to read:

350.138 (4) (d) The department shall issue a permit to the applicant after a hearing under par. (b), and after giving substantial weight to the testimony or report given under s. 195.03 (30), if the department finds that the proposed snowmobile crossing is advisable and feasible. In making its finding, the department shall consider, but not be limited to, all of the following factors:

1. Whether the proposed snowmobile rail crossing could pose a substantial danger to public safety.

2. Whether a snowmobile rail crossing that is located near the proposed snowmobile rail crossing provides an adequate crossing for snowmobiles.

3. Whether the proposed snowmobile rail crossing would have a substantial adverse effect on railroad operations.

4. Whether the proposed snowmobile rail crossing conforms with the requirements of the rules promulgated under s. 350.137.

**SECTION 14.** 350.138 (4) (e) of the statutes is created to read:

350.138 (4) (e) If the department issues a permit to an applicant under this section, the rail authority shall construct that portion of the snowmobile rail crossing that is on the track and that portion that extends outward 4 feet from each outer rail.

**SECTION 15.** 350.138 (5) of the statutes is renumbered 350.138 (5) (a) and amended to read:

350.138 (5) (a) The department may charge an initial application fee not to exceed \$150 for the costs of reviewing a permit application under sub. (4). ~~Neither a rail authority nor the department may charge any other fee or amount for the construction or use of a snowmobile rail crossing or for the use of the right-of-way for the crossing.~~ If the department charges the fee, the applicant must include the fee with the permit application.

**SECTION 16.** 350.138 (5) (b) of the statutes is created to read:

350.138 (5) (b) Except as provided under par. (c), if the department issues a permit to an applicant under this section, the applicant shall pay the rail authority \$1,500 within 30 days after the date on which the permit is issued, to compensate the rail authority for the cost of constructing the snowmobile rail crossing and to pay for the use of the snowmobile rail crossing by snowmobile operators.

**SECTION 17.** 350.138 (5) (c) of the statutes is created to read:

350.138 (5) (c) Biennially, beginning on January 1, 2004, the department shall adjust the fee under par. (b) by a percentage that is equal to the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, for the 24-month period ending on December 31 of the previous calendar year.

**SECTION 18.** 350.138 (6) of the statutes is amended to read:

350.138 (6) **LIABILITY INSURANCE.** The department shall require a snowmobile organization to maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction ~~or~~ maintenance, existence, or use of a snowmobile rail crossing for which a permit is approved issued under this section, except that the department may not require the snowmobile organization to maintain in effect liability insurance to indemnify the applicable rail authority for injuries sustained by a person engaged in a recreational activity, if the rail authority would be immune from liability for those injuries under s. 895.52. Regardless of the number of snowmobile rail crossings

that the snowmobile organization maintains under this section and s. 350.139, the amount of the liability insurance that is required to be maintained under this subsection shall be at least \$1,000,000 \$2,000,000 for each snowmobile organization. ~~Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000.~~ The snowmobile organization shall designate the applicable rail authority as a named insured on the policy. Any liability insurance that is required under this subsection for the purpose of indemnifying a rail authority that is a rail transit body shall also indemnify the owners and operators of any railroad using the tracks of the rail transit body. Annually, beginning on the first day of the 3rd month beginning after the effective date of this subsection ... [revisor inserts date], each snowmobile organization that is required to maintain liability insurance under this subsection shall furnish proof of that insurance to the applicable rail authority and to the department.

**SECTION 19.** 350.138 (8) (a) of the statutes is repealed.

**SECTION 20.** 350.138 (8) (b) of the statutes is renumbered 350.138 (8) and amended to read:

350.138 (8) **TERMS REVOCATION OF PERMITS.** The department may revoke ~~or refuse to renew~~ a permit that it ~~previously approved only issued~~ if the department determines that the snowmobile rail crossing is not constructed or maintained in compliance with the rules promulgated under s. 350.137, ~~the~~. The department shall revoke a permit that it issued if the snowmobile organization does not maintain any liability insurance that is required under sub. (6) or the snowmobile rail crossing is not maintained for use by snowmobiles for at least 5 winters in any 10-year period. The 10-year period for purposes of this paragraph subsection shall begin on the first December 15 following the date of the issuance of the permit.

**SECTION 21.** 350.138 (9) of the statutes is amended to read:

350.138 (9) **INSPECTION AUTHORIZED.** The department ~~or the office of the commissioner of railroads~~ may inspect the site of a proposed snowmobile rail crossing or the site of a snowmobile rail crossing for which a permit has been issued to determine whether there are grounds to refuse to issue a permit under sub. (4) or to revoke ~~or refuse to renew~~ a permit under sub. (8) (b).

**SECTION 22.** 350.139 (1) (a) of the statutes is amended to read:

350.139 (1) (a) "Established snowmobile rail crossing" means a snowmobile rail crossing that has been used by snowmobiles, or maintained by a snowmobile organization for use by snowmobiles, for at least 5 winters of the last 10 years.

**SECTION 23.** 350.139 (3) of the statutes is amended to read:

350.139 (3) CHARGES PROHIBITED. Neither the department nor a rail authority may charge a fee or any other amount for the use of an established snowmobile rail crossing or for the use of a right-of-way for the established snowmobile rail crossing, unless otherwise agreed upon by the rail authority and a snowmobile organization.

SECTION 24. 350.139 (4) (intro.) of the statutes is amended to read:

350.139 (4) REQUIREMENTS USE AND MAINTENANCE REQUIREMENTS. (intro.) The department shall require a snowmobile organization that uses or maintains any part of an established snowmobile rail crossing to do all of the following:

SECTION 25. 350.139 (4) (a) of the statutes is amended to read:

350.139 (4) (a) Maintain that portion of the established snowmobile rail crossing in conformance with the rules promulgated under s. 350.137 that is outside of the portion of the snowmobile rail crossing that extends outward 4 feet from each outer rail.

SECTION 26. 350.139 (4) (b) of the statutes is amended to read:

350.139 (4) (b) Maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction ~~or~~ maintenance, existence, or use of the established snowmobile rail crossing, except that the department shall not require the snowmobile organization to maintain in effect liability insurance to indemnify the applicable rail authority for injuries sustained by a person engaged in a recreational activity, if the rail authority would be immune from liability for those injuries under s. 895.52. Regardless of the number of established snowmobile rail crossings and snowmobile rail crossings under s. 350.138 that each snowmobile organization maintains, the amount of the liability insurance that is required to be maintained under this paragraph shall be at least ~~\$1,000,000~~ \$2,000,000 for each snowmobile organization. ~~Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000~~ The snowmobile organization shall designate the applicable rail authority as a named insured on the policy. Any liability insurance that is required under this paragraph for the purpose of indemnifying a rail authority that is a rail transit body shall also indemnify the owners and operators of any railroad using the tracks of the rail transit body. Annually, beginning on the first day of the 3rd month beginning after the effective date of this paragraph ..., [revisor inserts date], each snowmobile organization that is required to maintain liability insurance under this paragraph shall furnish proof of that insurance to the applicable rail authority and to the department.

SECTION 27. 350.139 (5) of the statutes is amended to read:

350.139 (5) INSPECTION AUTHORIZED. The department or the office of the commissioner of railroads may inspect an established snowmobile rail crossing to determine whether the snowmobile organization maintaining the crossing is in compliance with the requirements imposed under sub. (4).

SECTION 28. 350.1395 (title) of the statutes is amended to read:

**350.1395 (title) Snowmobile rail crossings; closing and removal; review of rail authorities; insurance rules.**

SECTION 29. 350.1395 (1) (a) of the statutes is repealed.

SECTION 30. 350.1395 (2) (a) of the statutes is amended to read:

350.1395 (2) (a) ~~Except as provided in par. (b), no~~ A rail authority may close or remove a snowmobile rail crossing subject to a permit under s. 350.138 or an established snowmobile rail crossing if it enters into a written agreement with a snowmobile organization that holds a permit under s. 350.138 or that maintains an established snowmobile rail crossing under s. 350.139 under which the snowmobile organization agrees to allow the rail authority to close or remove the snowmobile rail crossing. Each rail authority that enters into a written agreement with a snowmobile organization under this paragraph to close or remove a snowmobile rail crossing shall notify the department of the agreement and that the snowmobile rail crossing has been closed or removed.

SECTION 31. 350.1395 (2) (b) of the statutes is renumbered 350.1395 (2) (b) 1. and amended to read:

350.1395 (2) (b) 1. A rail authority may petition the department to review any failure of a snowmobile organization to comply with any requirements imposed under s. 350.138 or 350.139 (4), and to issue an order authorizing authorize the rail authority to close or remove an established a snowmobile rail crossing. The department shall decide the matter after notice and hearing. The order issued by the department is a final order of the department subject to judicial review under ch. 227 rail authority may file a petition under this subdivision without requesting or obtaining a written agreement from the snowmobile organization to close or remove the snowmobile rail crossing.

SECTION 32. 350.1395 (2) (b) 2. of the statutes is created to read:

350.1395 (2) (b) 2. The department shall hold a hearing on a petition filed under subd. 1. after giving notice of the hearing to the rail authority, the snowmobile organization, and the office of the commissioner of railroads. The hearing shall be a contested case hearing under ch. 227. The department's order shall be a final order subject to judicial review under ch. 227.

SECTION 33. 350.1395 (2) (b) 3. of the statutes is created to read:

350.1395 (2) (b) 3. The department shall grant a rail authority's petition under subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under subd. 2., and after giving substantial weight to the office of the commissioner of railroads' testimony or report given under s. 195.03 (30) (b), the department finds that any of the following applies:

a. The snowmobile rail crossing has not been maintained for use for at least 5 winters in the 10 years preceding the year in which the petition was filed.

b. The snowmobile rail crossing poses a substantial danger to public safety.

c. Another snowmobile rail crossing is located near the snowmobile rail crossing that is the subject of the petition and the other snowmobile rail crossing provides a crossing for snowmobiles that is adequate and accessible.

d. The snowmobile rail crossing has a substantial adverse effect on the operations of the rail authority.

**SECTION 34.** 350.1395 (3) of the statutes is amended to read:

350.1395 (3) REVIEW OF ACTIONS OF RAIL AUTHORITY. A snowmobile organization may request the department to review any failure of ~~the~~ a rail authority, and a rail authority may request the department to review any fail-

ure of a snowmobile organization, to comply with s. 350.138 or 350.139 or, this section, or rules promulgated under these sections or s. 350.137. The department shall decide the matter after notice and a contested case hearing. If the department finds that the rail authority or snowmobile organization failed to comply with s. 350.138 or 350.139, this section, or rules promulgated under these sections or s. 350.137, the department shall issue an order directing the rail authority or snowmobile organization to take appropriate action in order to comply with ~~this that~~ section. The order issued by the department is a final order of the department subject to judicial review under ch. 227.

**SECTION 35.** 350.1395 (4) (b) of the statutes is amended to read:

350.1395 (4) (b) ~~No rule may be promulgated~~ The department may not promulgate a rule under this subsection without ~~approval of the rule by the public service commission~~ first consulting with each rail authority in this state, that has furnished the department with the information required under s. 350.138 (2m), an established snowmobile association that represents snowmobile clubs, as defined in s. 350.138 (1) (e), in this state, and the office of the commissioner of railroads.