

## 1999 SENATE BILL 439

March 7, 2000 – Introduced by Senator BRESKE, cosponsored by Representative SPILLNER. Referred to Committee on Insurance, Tourism, Transportation and Corrections.

1     **AN ACT to repeal** 350.137 (3), 350.138 (8) (a) and 350.1395 (1) (a); **to renumber**  
2             **and amend** 350.138 (4), 350.138 (5), 350.138 (8) (b) and 350.1395 (2) (b); **to**  
3             **amend** 350.137 (1), 350.137 (2) (a), 350.138 (2), 350.138 (3), 350.138 (6),  
4             350.138 (8) (title), 350.138 (9), 350.139 (1) (a), 350.139 (3), 350.139 (4) (title),  
5             350.139 (4) (intro.), 350.139 (4) (a), 350.139 (4) (b), 350.139 (5), 350.1395 (title),  
6             350.1395 (2) (a), 350.1395 (3) and 350.1395 (4) (b); and **to create** 195.03 (30) (a),  
7             195.03 (30) (b), 195.307, 350.138 (2m), 350.138 (4) (a) 1., 2., 3. and 4., 350.138  
8             (4) (b), 350.138 (4) (c), 350.138 (4) (d), 350.138 (4) (e), 350.138 (5) (b), 350.138  
9             (5) (c), 350.1395 (2) (b) 2. and 350.1395 (2) (b) 3. of the statutes; **relating to:** the  
10            regulation of snowmobile rail crossings.

---

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

Current law regulates snowmobile rail crossings (crossings) that are not located on highways or streets. Under that law, only a snowmobile organization may construct a crossing. Current law defines a snowmobile organization as a snowmobile club, a snowmobile alliance or a county. In order to construct a crossing, the snowmobile organization must obtain a permit from the department of natural

**SENATE BILL 439**

resources (DNR). Current law also regulates established crossings which are defined as crossings that have been used by snowmobiles for at least five winters of the last ten years. This bill makes changes to certain procedures and requirements under current law that apply to snowmobile organizations and to rail authorities that construct or maintain crossings. Those changes include the following:

1. Under current law, DNR must promulgate rules to establish uniform maintenance standards and uniform design and construction standards for crossings after consulting with the snowmobile recreational council. Under this bill, DNR must instead consult with an established snowmobile association that represents snowmobile clubs and with the office of the commissioner of railroads.

2. The bill requires that each rail authority that has rail lines in this state designate an agent who is authorized on behalf of the rail authority to receive copies of crossing permit applications filed with DNR and that DNR send copies of crossing permit applications to the designated agents of the applicable rail authorities.

3. Current law requires DNR to approve or deny a crossing permit application within 60 days after receipt and provides that DNR may deny the application only if DNR determines that the proposed crossing does not comply with rules promulgated by DNR. The bill provides that DNR must approve the application within 90 days of sending a copy of the application to the rail authority's designated agent, provided certain conditions are met. The conditions require, among other things, that the permit applicant contact the rail authority to discuss the advisability and feasibility of the proposed crossing, that the application comply with certain rules promulgated by DNR and that the rail authority not object to the application. The bill establishes a hearing procedure that applies if the rail authority does object to the application. The bill requires that the office of the commissioner of railroads give testimony at such a hearing addressing certain issues including whether the proposed rail crossing could pose a substantial danger to public safety.

4. Under current law, DNR may charge an initial application fee not to exceed \$150. The bill requires that in addition to this fee, an applicant who receives a permit must pay the rail authority \$1,500 to compensate the rail authority for the cost of construction and to pay for the use of the crossing by snowmobile operators.

5. Under current law, a snowmobile organization must maintain liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction or maintenance of a crossing for which there is a permit. Under the bill, the insurance must also indemnify the rail authority for damages resulting from the existence or use of the crossing. The bill also provides that the snowmobile organization need not maintain the insurance to indemnify the 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 current law.

6. Under current law, the initial term for a crossing permit is 11 years. The permit may be renewed for additional periods of time not to exceed 11 years per renewal. This bill eliminates the term limit for a crossing permit.

7. Under current law, only DNR is authorized to inspect an established snowmobile rail crossing to determine whether the snowmobile organization is maintaining the crossing in conformance with rules promulgated by DNR and is

**SENATE BILL 439**

maintaining required liability insurance. This bill authorizes the office of the commissioner of railroads to also conduct such an inspection.

8. The bill specifies which portion of a crossing for which a permit is issued that the rail authority must construct and which portion of an established crossing that a snowmobile organization must maintain.

9. Current law provides that a rail authority may not close or remove a snowmobile crossing that is subject to permit unless the rail authority first petitions DNR for an order authorizing the rail authority to close or remove the crossing. This bill provides that a rail authority may close or remove a crossing, whether or not the crossing is subject to a permit, if it enters into an agreement with the snowmobile organization to close or remove the crossing. The bill also authorizes a rail authority to petition DNR to close or remove a crossing without first obtaining an agreement from the snowmobile organization.

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:***

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

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

5           **SECTION 2.** 195.03 (30) (b) of the statutes is created to read:

6           195.03 **(30)** (b) The office shall give the department of natural resources its  
7           opinion on whether the snowmobile crossing should be closed or removed in  
8           testimony at the hearing under s. 350.1395 (2) (b) 2. or in a written report for  
9           introduction into the hearing record.

10          **SECTION 3.** 195.307 of the statutes is created to read:

11          **195.307 Snowmobile rail crossings.** Sections 195.28, 195.285, 195.286 and  
12          195.29 do not apply to snowmobile rail crossings for which a permit is issued under  
13          s. 350.138.

14          **SECTION 4.** 350.137 (1) of the statutes is amended to read:

**SENATE BILL 439**

1           350.137 (1) The department, after having consulted with the snowmobile  
2 recreational council each rail authority, as defined in s. 350.138 (1) (b), in this state,  
3 that has furnished the department with the information required under s. 350.138  
4 (2m), an established snowmobile association that represents snowmobile clubs, as  
5 defined in s. 350.138 (1) (e), in this state and the office of the commissioner of  
6 railroads, shall promulgate rules to establish uniform maintenance standards and  
7 uniform design and construction standards for snowmobile rail crossings under ss.  
8 350.138 and 350.139.

9           **SECTION 5.** 350.137 (2) (a) of the statutes is amended to read:

10           350.137 (2) (a) Preclude the use of a proposed site for a snowmobile rail crossing  
11 because the site would be unsafe due to poor visibility of the proposed snowmobile  
12 rail crossing from the cab of a railroad engine an approaching train from the position  
13 of a snowmobile operator who is stopped on the approach to the proposed crossing.

14           **SECTION 6.** 350.137 (3) of the statutes is repealed.

15           **SECTION 7.** 350.138 (2) of the statutes is amended to read:

16           350.138 (2) PERMIT REQUIRED. No person may construct a snowmobile rail  
17 crossing that is not located on a railroad crossing of a public highway or street unless  
18 the person is a snowmobile organization and has a permit approved issued under this  
19 section. No person may maintain a snowmobile rail crossing that is not located on  
20 a railroad crossing of a public highway or street unless the person is a snowmobile  
21 organization and either the person has a permit approved issued under this section  
22 or the snowmobile rail crossing is an established snowmobile rail crossing. In order  
23 to obtain a permit required under this section, a snowmobile organization shall apply  
24 to the department. A separate permit is required for each snowmobile rail crossing  
25 subject to this section.

**SENATE BILL 439**

1           **SECTION 8.** 350.138 (2m) of the statutes is created to read:

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

9           **SECTION 9.** 350.138 (3) of the statutes is amended to read:

10           350.138 **(3)** ~~CONTENTS OF~~ PROCEDURES FOR PERMIT APPLICATION. An application  
11 submitted under sub. (2) shall include adequate descriptions and drawings showing  
12 the proposed location of the snowmobile rail crossing, the design of the snowmobile  
13 rail crossing and the location of snowmobile trails that connect with the snowmobile  
14 rail crossing. The department shall, upon receipt of an application submitted under  
15 sub. (2), send a copy of the application to the agent designated under sub. (2m) for  
16 the applicable rail authority and shall, immediately thereafter, send notice to the  
17 applicant that a copy of the application was sent to the designated agent. The notice  
18 to the applicant must include the name and address of the designated agent to whom  
19 the department sent a copy of the application. The department may reject an  
20 application within 15 days after it is submitted if the application is incomplete or is  
21 not sufficiently detailed to determine whether to approve or deny the application.

22           **SECTION 10.** 350.138 (4) of the statutes is renumbered 350.138 (4) (a) (intro.)  
23 and amended to read:

24           350.138 **(4)** (a) (intro.) The Except as provided under par. (e), the department  
25 shall approve ~~or deny~~ an application submitted under sub. (2) ~~within 60 days after~~

**SENATE BILL 439****SECTION 10**

1 ~~receiving a complete and sufficiently detailed application. The department may~~  
2 ~~deny an application only within 90 days after sending a copy of the application to the~~  
3 ~~rail authority's designated agent under sub. (3) if the department determines that~~  
4 ~~the proposed snowmobile rail crossing does not comply with the rules promulgated~~  
5 ~~under s. 350.137. all of the following conditions have been met:~~

6 **SECTION 11.** 350.138 (4) (a) 1., 2., 3. and 4. of the statutes are created to read:

7 350.138 (4) (a) 1. Within 30 days after the date that the department sent a copy  
8 of the application to the applicable rail authority, the applicant contacted the  
9 applicable rail authority in writing to discuss the advisability and feasibility of the  
10 proposed rail crossing.

11 2. The applicant furnished the department with a copy of the writing by which  
12 the applicant contacted the applicable rail authority under subd. 1.

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

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

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

19 350.138 (4) (b) The department shall hold a hearing on the application if the  
20 conditions under par. (a) 1. and 4. are met, if the rail authority files with the  
21 department an objection to the application within 60 days after receiving notice  
22 under sub. (3) and the objection contains all of the following:

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

**SENATE BILL 439**

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

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

3           350.138 (4) (c) The department shall give notice of any hearing scheduled  
4 under par. (b) to the applicant, the applicable rail authority and to the office of the  
5 commissioner of railroads. The hearing shall be a contested case hearing under ch.  
6 227. The department's order is a final order subject to judicial review under ch. 227.

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

8           350.138 (4) (d) The department shall issue a permit to the applicant after a  
9 hearing under par. (b), and after giving substantial weight to the testimony or report  
10 given under s. 195.03 (30), if the department finds that the proposed snowmobile  
11 crossing is advisable and feasible. In making its finding, the department shall  
12 consider, but not be limited to, all of the following factors:

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

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

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

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

21           **SECTION 15.** 350.138 (4) (e) of the statutes is created to read:

22           350.138 (4) (e) If the department issues a permit to an applicant under this  
23 section, the rail authority shall construct that portion of the snowmobile rail crossing  
24 that is on the track and that portion that extends outward 4 feet from each outer rail.



**SENATE BILL 439**

1           **SECTION 16.** 350.138 (5) of the statutes is renumbered 350.138 (5) (a) and  
2 amended to read:

3           350.138 **(5)** (a) The department may charge an initial application fee not to  
4 exceed \$150 for the costs of reviewing a permit application under sub. (4). ~~Neither~~  
5 ~~a rail authority nor the department may charge any other fee or amount for the~~  
6 ~~construction or use of a snowmobile rail crossing or for the use of the right-of-way~~  
7 ~~for the crossing. If the department charges the fee, the applicant must include the~~  
8 ~~fee with the permit application.~~

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

10           350.138 **(5)** (b) Except as provided under par. (c), if the department issues a  
11 permit to an applicant under this section, the applicant shall pay the rail authority  
12 \$1,500 within 30 days after the date on which the permit is issued, to compensate the  
13 rail authority for the the cost of constructing the snowmobile rail crossing and to pay  
14 for the use of the snowmobile rail crossing by snowmobile operators.

15           **SECTION 18.** 350.138 (5) (c) of the statutes is created to read:

16           350.138 **(5)** (c) Biennially, beginning January 1, 2002, the department shall  
17 adjust the fee under par. (b) by a percentage that is equal to the percentage change  
18 in the U.S. consumer price index for all urban consumers, U.S. city average for the  
19 24-month period ending on December 31 of the previous calendar year.

20           **SECTION 19.** 350.138 (6) of the statutes is amended to read:

21           350.138 **(6)** LIABILITY INSURANCE. The department shall require a snowmobile  
22 organization to maintain in effect liability insurance to indemnify the applicable rail  
23 authority for damages resulting from the design, construction ~~or~~ maintenance,  
24 existence or use of a snowmobile rail crossing for which a permit is ~~approved~~ issued  
25 under this section, except that the department shall not require the snowmobile



**SENATE BILL 439**

1 organization to maintain in effect liability insurance to indemnify the applicable rail  
2 authority for injuries sustained by a person engaged in a recreational activity, if the  
3 rail authority would be immune from liability for those injuries under s. 895.52.

4 Regardless of the number of snowmobile rail crossings that the snowmobile  
5 organization maintains under this section and s. 350.139, the amount of the liability  
6 insurance that is required to be maintained under this subsection shall be at least  
7 \$1,000,000 ~~\$2,000,000~~ for each snowmobile organization. ~~Beginning on January 1,~~

8 ~~1997, this minimum amount shall increase to \$2,000,000. The snowmobile~~  
9 organization shall designate the applicable rail authority as a named insured on the

10 policy. Any liability insurance that is required under this subsection for the purpose  
11 of indemnifying a rail authority that is a rail transit body shall also indemnify the  
12 owners and operators of any railroad using the tracks of the rail transit body.

13 Annually, beginning on the first day of the 3rd month beginning after the effective  
14 date of this subsection .... [revisor inserts date], each snowmobile organization that  
15 is required to maintain liability insurance under this subsection shall furnish proof  
16 of that insurance to the applicable rail authority and to the department.

17 **SECTION 20.** 350.138 (8) (title) of the statutes is amended to read:

18 350.138 **(8)** (title) ~~TERMS~~ REVOCAION OF PERMITS.

19 **SECTION 21.** 350.138 (8) (a) of the statutes is repealed.

20 **SECTION 22.** 350.138 (8) (b) of the statutes is renumbered 350.138 (8) and  
21 amended to read:

22 350.138 **(8)** The department may revoke ~~or refuse to renew~~ a permit that it  
23 ~~previously approved only~~ issued if the department determines that the snowmobile  
24 rail crossing is not constructed or maintained in compliance with the rules  
25 promulgated under s. 350.137, ~~the.~~ The department must revoke a permit that it

**SENATE BILL 439**

1 issued if the snowmobile organization does not maintain any liability insurance that  
2 is required under sub. (6) or the snowmobile rail crossing is not maintained for use  
3 by snowmobiles for at least 5 winters in any 10-year period. The 10-year period for  
4 purposes of this paragraph subsection shall begin on the first December 15 following  
5 the date of the issuance of the permit.

6 **SECTION 23.** 350.138 (9) of the statutes is amended to read:

7 350.138 (9) INSPECTION AUTHORIZED. The department or the office of the  
8 commissioner of railroads may inspect the site of a proposed or snowmobile rail  
9 crossing or the site of a snowmobile rail crossing for which a permit has been issued  
10 to determine whether there are grounds to refuse to issue a permit under sub. (4) or  
11 to revoke a permit under sub. (8) (b).

12 **SECTION 24.** 350.139 (1) (a) of the statutes is amended to read:

13 350.139 (1) (a) “Established snowmobile rail crossing” means a snowmobile rail  
14 crossing that has been used by snowmobiles, or maintained by a snowmobile  
15 organization for use by snowmobiles, for at least 5 winters of the last 10 years.

16 **SECTION 25.** 350.139 (3) of the statutes is amended to read:

17 350.139 (3) CHARGES PROHIBITED. Neither the department nor a rail authority  
18 may charge a fee or any other amount for the use of an established snowmobile rail  
19 crossing or for the use of a right-of-way for the established snowmobile rail crossing,  
20 unless otherwise agreed upon by the rail authority and a snowmobile organization.

21 **SECTION 26.** 350.139 (4) (title) of the statutes is amended to read:

22 350.139 (4) (title) ~~REQUIREMENTS~~ USE AND MAINTENANCE REQUIREMENTS.

23 **SECTION 27.** 350.139 (4) (intro.) of the statutes is amended to read:

**SENATE BILL 439**

1           350.139 (4) (intro.) The department shall require a snowmobile organization  
2 that uses or maintains any part of an established snowmobile rail crossing to do all  
3 of the following:

4           **SECTION 28.** 350.139 (4) (a) of the statutes is amended to read:

5           350.139 (4) (a) Maintain that portion of the established snowmobile rail  
6 crossing in conformance with the rules promulgated under s. 350.137 that is outside  
7 of the portion of the snowmobile rail crossing that extends outward 4 feet from each  
8 outer rail.

9           **SECTION 29.** 350.139 (4) (b) of the statutes is amended to read:

10          350.139 (4) (b) Maintain in effect liability insurance to indemnify the  
11 applicable rail authority for damages resulting from the design, construction or  
12 maintenance, existence or use of the established snowmobile rail crossing, except  
13 that the department shall not require the snowmobile organization to maintain in  
14 effect liability insurance to indemnify the applicable rail authority for injuries  
15 sustained by a person engaged in a recreation activity, if the rail authority would be  
16 immune from liability for those injuries under s. 895.52. Regardless of the number  
17 of established snowmobile rail crossings and snowmobile rail crossings under s.  
18 350.138 that each snowmobile organization maintains, the amount of the liability  
19 insurance that is required to be maintained under this paragraph shall be at least  
20 \$1,000,000 \$2,000,000 for each snowmobile organization. Beginning on January 1,  
21 1997, this minimum amount shall increase to \$2,000,000. The snowmobile  
22 organization shall designate the applicable rail authority as a named insured on the  
23 policy. Any liability insurance that is required under this paragraph for the purpose  
24 of indemnifying a rail authority that is a rail transit body shall also indemnify the  
25 owners and operators of any railroad using the tracks of the rail transit body.

**SENATE BILL 439**

1 Annually, beginning on the first day of the 3rd month beginning after the effective  
2 date of this paragraph .... [revisor inserts date], each snowmobile organization that  
3 is required to maintain liability insurance under this paragraph shall furnish proof  
4 of that insurance to the applicable rail authority and to the department.

5 **SECTION 30.** 350.139 (5) of the statutes is amended to read:

6 350.139 (5) INSPECTION AUTHORIZED. The department or the office of the  
7 commissioner of railroads may inspect an established snowmobile rail crossing to  
8 determine whether the snowmobile organization maintaining the crossing is in  
9 compliance with the requirements imposed under sub. (4).

10 **SECTION 31.** 350.1395 (title) of the statutes is amended to read:

11 **350.1395 (title) Snowmobile rail crossings; closing and removal; review**  
12 **of rail authorities; insurance rules.**

13 **SECTION 32.** 350.1395 (1) (a) of the statutes is repealed.

14 **SECTION 33.** 350.1395 (2) (a) of the statutes is amended to read:

15 350.1395 (2) (a) ~~Except as provided in par. (b), no~~ A rail authority may close  
16 or remove a snowmobile rail crossing subject to a permit under s. 350.138 or an  
17 established snowmobile rail crossing if it enters into a written agreement with the  
18 snowmobile organization under which the snowmobile organization agrees to allow  
19 the rail authority to close or remove the snowmobile rail crossing. Each rail authority  
20 that enters into a written agreement with a snowmobile organization that holds a  
21 permit under s. 350.138 or that maintains an established snowmobile rail crossing  
22 under s. 350.139 to close or remove a snowmobile rail crossing shall notify the  
23 department of the agreement and that the snowmobile rail crossing has been closed  
24 or removed.

**SENATE BILL 439**

1           **SECTION 34.** 350.1395 (2) (b) of the statutes is renumbered 350.1395 (2) (b) 1.  
2 and amended to read:

3           350.1395 **(2)** (b) 1. A rail authority may petition the department to review any  
4 failure of a snowmobile organization to comply with any requirements imposed  
5 under s. 350.138 or 350.139 (4), and to issue an order authorizing authorize the rail  
6 authority to close or remove an established a snowmobile rail crossing. The  
7 department shall decide the matter after notice and hearing. The order issued by the  
8 department is a final order of the department subject to judicial review under ch. 227.  
9 The rail authority may file a petition under this subdivision without requesting or  
10 obtaining a written agreement from the snowmobile organization to close or remove  
11 the snowmobile rail crossing.

12           **SECTION 35.** 350.1395 (2) (b) 2. of the statutes is created to read:

13           350.1395 **(2)** (b) 2. The department shall hold a hearing on a petition filed under  
14 subd. 1. after giving notice of the hearing to the rail authority, snowmobile  
15 organization and the office of the commissioner of railroads. The hearing shall be a  
16 contested case hearing under ch. 227. The department's order shall be a final order  
17 subject to judicial review under ch. 227.

18           **SECTION 36.** 350.1395 (2) (b) 3. of the statutes is created to read:

19           350.1395 **(2)** (b) 3. The department shall grant a rail authority's petition under  
20 subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under subd.  
21 2., and after giving substantial weight to the office of the commissioner of railroads'  
22 testimony or report given under s. 195.03 (30) (b), the department finds that any of  
23 the following apply:

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

**SENATE BILL 439****SECTION 36**

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

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

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

7           **SECTION 37.** 350.1395 (3) of the statutes is amended to read:

8           350.1395 **(3)** REVIEW OF ACTIONS OF RAIL AUTHORITY. A snowmobile organization  
9 may request the department to review any failure of the rail authority, and the rail  
10 authority may request the department to review any failure of a snowmobile  
11 organization, to comply with s. 350.138 or, 350.139 or, this section or rules  
12 promulgated under these sections or s. 350.137. The department shall decide the  
13 matter after notice and a contested case hearing. If the department finds that the  
14 rail authority or snowmobile organization failed to comply with s. 350.138, 350.139,  
15 this section or rules promulgated under these sections or s. 350.137, the department  
16 shall issue an order directing the rail authority or snowmobile organization to take  
17 appropriate action in order to comply with ~~this~~ that section. The order issued by the  
18 department is a final order of the department subject to judicial review under ch. 227.

19           **SECTION 38.** 350.1395 (4) (b) of the statutes is amended to read:

20           350.1395 **(4)** (b) ~~No rule may be promulgated~~ The department may not  
21 promulgate a rule under this subsection without ~~approval of the rule by the public~~  
22 ~~service commission~~ first consulting with each rail authority in this state, that has  
23 furnished the department with the information required under s. 350.138 (2m), an

**SENATE BILL 439**

1 established snowmobile association that represents snowmobile clubs, as defined in  
2 s. 350.138 (1) (e), in this state and the office of the commissioner of railroads.

3 (END)