

1999 DRAFTING REQUEST

Bill

Received: **01/07/2000**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Charles Chvala (608) 266-9170**

By/Representing: **Mike Brown**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Alt. Drafters:

Subject: **Nat. Res. - boats snomos ATVs**

Extra Copies: **PEN**

Pre Topic:

No specific pre topic given

Topic:

Snowmobile rail crossings


Instructions:

See Attached - Talk to Doug Burnett for questions

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>
/P1	rkite 02/16/2000	chanaman 02/18/2000	jfrantze 02/18/2000	_____	lrb_docadmin 02/18/2000		
/P2	rkite 02/25/2000	wjackson 02/28/2000	jfrantze 02/28/2000	_____	lrb_docadmin 02/28/2000		
/1	rkite 03/01/2000	wjackson 03/02/2000	hhagen 03/02/2000	_____	lrb_docadmin 03/02/2000	lrb_docadminS&L 03/03/2000	

FE Sent For (03/02/2000.)

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FE Sent For:

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1?	rkite	/pl WLj 2/18	6/18	To RK 2/18			

FE Sent For:

<END>

1-5-2000

Mike Brown - Drafting request
Chvala's office

uniform snowmobile rail-crossing standards
will send over draft language

contact Doug Burnett with any questions

language represents consensus between
snowmobile groups, attorney general etc
re: "fix" to the current law

Robin,

Here's the agreed to language we'd like
drafted. Doug Burnett will be the contact
on this. He can be reached @ 6-9170.

Thanks,
Mike Brown

Kite, Robin

From: Burnett, Douglas
Sent: Wednesday, January 19, 2000 12:11 PM
To: 'Sam Gratz'
Cc: Kite, Robin
Subject: RE: (no subject)

Robin Kite is working on this and will contact you with technical questions. She is working on it now, I believe, and is aware of the time-sensitive nature of it.

-----Original Message-----

From: sam [mailto:samgratz@inpress.net]
Sent: Wednesday, January 19, 2000 11:00 AM
To: Douglas.Burnett@legis.state.wi.us
Subject: (no subject)

Doug -

I thought that it might be easiest to e-mail, to inquire as to how soon we can expect the draft of the bill regarding snowmobile/RR crossings. I want you to know that I am available to work on this whenever. You can always e-mail me, or call at 251-6394.

You understand that both groups here are concerned to move this as quickly as possible. Judge Crabb is looking for a report by March 1 that this is legislation is moving, and is likely to be done this spring.

Thanks for all of the help from Chuck and yourself.

Sam Gratz

*Per Doug Burnett
Contact Sam Gratz for answers to technical
questions 251-6394
He represent various railroads*

Kite, Robin

From: sam [samgratz@inxpress.net]
Sent: Friday, February 04, 2000 1:36 PM
To: Burnett, Douglas
Cc: Kite, Robin
Subject: Re: (no subject)

Doug -

I hadn't yet heard anything further, and I recognize how much is going on right now. Do you think that I realistic time-frame on this might still include introduction and a hearing in Feb. with this getting to the Senate floor the first week of March floorperiod? I will shortly have to let my friends at the Canadian Pacific know what to plan for Judge Crabb by March 1.

Thanks, Sam Gratz

"Burnett, Douglas" wrote:

> Robin Kite is working on this and will contact you with technical questions.
> She is working on it now, I believe, and is aware of the time-sensitive
> nature of it.

>
> -----Original Message-----
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> Sent: Wednesday, January 19, 2000 11:00 AM
> To: Douglas.Burnett@legis.state.wi.us
> Subject: (no subject)

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> You understand that both groups here are concerned to move
> this as
> quickly as possible. Judge Crabb is looking for a report by
> March 1 that
> this is legislation is moving, and is likely to be done
> this spring.

> Thanks for all of the help from Chuck and yourself.

> Sam Gratz

Kite, Robin

From: Burnett, Douglas
Sent: Wednesday, February 09, 2000 10:17 AM
To: Kite, Robin
Subject: RE: Snowmobile crossings

Thank you Robin. That sounds like a fine way to proceed.

On the relationship to the litigation, I unfortunately was not in the meeting between Sam and Chuck on this. I will ask Sam to respond to you and me directly on that question.

-----Original Message-----

From: Kite, Robin
Sent: Wednesday, February 09, 2000 9:58 AM
To: Burnett, Douglas
Subject: Snowmobile crossings

Doug,

I received a copy of the e-mail sent to you by Sam Gratz concerning the snowmobile crossings bill. I want to assure you that I am working on the bill but it is a very complicated request and I expect that the first draft will likely be submitted in preliminary form because the request was made in the form of draft language and provided no explanation of the intent of the proposed legislation. Because I have many questions about the request, I thought it would be best to prepare a draft for you and provide you with notes that explain my questions.

As for the connection between this draft and apparent on-going litigation before Judge Crabb, I have not been given any explanation of the relevance of this draft to that litigation. Do you have any more information on this issue?

Please let me know if you have any questions concerning the status of this draft.

Robin N. Kite, Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, Wisconsin 53701-2037
(608) 266-7291

Kite, Robin

From: Burnett, Douglas
Sent: Wednesday, February 09, 2000 11:20 AM
To: 'Sam Gratz'
Cc: Kite, Robin
Subject: FW: Snowmobile crossings

Sam-Here's the status on the draft. Could you please respond directly to Robin on the question about the connection with the litigation? (also cc your reply to me as well)

And I will forward directly to you the drafters' notes and the P-draft so we can get questions dealt with asap.

-----Original Message-----

From: Kite, Robin
Sent: Wednesday, February 09, 2000 9:58 AM
To: Burnett, Douglas
Subject: Snowmobile crossings

Doug,

I received a copy of the e-mail sent to you by Sam Gratz concerning the snowmobile crossings bill. I want to assure you that I am working on the bill but it is a very complicated request and I expect that the first draft will likely be submitted in preliminary form because the request was made in the form of draft language and provided no explanation of the intent of the proposed legislation. Because I have many questions about the request, I thought it would be best to prepare a draft for you and provide you with notes that explain my questions.

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Robin N. Kite, Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, Wisconsin 53701-2037
(608) 266-7291

Kite, Robin

From: sam [samgratz@inxpress.net]
Sent: Wednesday, February 09, 2000 2:26 PM
To: Robin.Kite@legis.state.wi.us
Cc: Douglas.Burnett@legis.state.wi.us
Subject: (no subject)

Doug Burnett asked me to inform you as to the issue with Judge Crabb.

Weaknesses in the current statute regarding primarily safety issues caused action between the Canadian Pacific and the State of Wisconsin. The affected parties, however, are actually the snowmobilers. The result of this legal action was negotiation between the snowmobile organization and the railroad. The DNR and the AG's office were both involved in the discussions, as well as the Commissioner of Railroads.

Because the negotiations took almost a year, Judge Crabb has twice approved delays in the case before her. She has indicated that if the parties can not report to her by March 1 that there is a likelihood of a legislative solution, then the case must proceed. None of the parties want that. We hope that since all affected parties agree on the solution, that this can still pass. Movement on this Senate bill will likely satisfy the court.

Sam Gratz

WI ST 350.137
W.S.A. 350.137

WEST'S WISCONSIN STATUTES ANNOTATED
VEHICLES
CHAPTER 350. SNOWMOBILES

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Current through 1997 Act 338, published 7/3/1998

350.137. Uniform snowmobile rail crossing standards

(1) The department, after having consulted with the ~~snowmobile recreational council~~ rail authorities, snowmobile organizations and Office of the Commissioner of Railroads ("OCR"), 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.

(2) The maintenance standards shall include requirements for the marking of snowmobile rail crossings and for the maintenance of adequate drainage of railroad rights-of-way. The design and construction standards shall include a list and a description of the frequency and speed of trains and the types of railroad tracks, embankments, ditches, snowmobile trail alignments and other configurations that do any of the following:

(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~~; a train from the position of a snowmobile operator stopped on the approach to the proposed crossing.

(b) Make it difficult to construct a snowmobile rail crossing at a proposed site because of steep embankments or irregular terrain near the railroad track.

(3) No rule may be promulgated under this section without ~~the approval of the rule by the public service commission~~; consultation with rail authorities, snowmobile organizations and OCR.

WI ST 350.138
W.S.A. 350.138

WEST'S WISCONSIN STATUTES ANNOTATED
VEHICLES
CHAPTER 350. SNOWMOBILES

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Current through 1997 Act 338, published 7/3/1998

350.138. Snowmobile rail crossings requiring permits

(1) **Definitions.** In this section:

- (a) "Established snowmobile rail crossing" has the meaning given in s. 350.139(1)(a).
- (b) "Rail authority" means a rail transit body or a railroad corporation.
- (c) "Rail transit body" means any transit or transportation commission or authority or public corporation established by law or by interstate compact to provide rail service.
- (d) "Snowmobile alliance" means an organization that consists of or represents any combination of 2 or more snowmobile clubs or counties.
- (e) "Snowmobile club" means an organization that meets at least 3 times a year, that has at least 10 members, that promotes snowmobiling and that participates in the department's program under s. 350.12(4)(b)2.
- (f) "Snowmobile organization" means a snowmobile club, a snowmobile alliance or a county.

(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 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 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.

(3) ~~Contents of permit application~~ **Permit applications.** 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. A snowmobile organization must file an application for a permit with the DNR, and the DNR, upon receipt of the application, shall send a copy of the application to the designated agent of the applicable rail authority (with a copy of the cover letter to the snowmobile organization). Every rail authority with rail lines in Wisconsin shall submit to the department the name and address

of the designated agent who is to receive the applications. 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.

(4) Permit application approval and denials.

~~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~~(a) The snowmobile organization shall contact the applicable rail authority within 30 days from the date the department sends a copy of the application to the applicable rail authority to discuss the advisability and feasibility of the proposed rail crossing. If the snowmobile organization fails to contact the applicable rail authority as provided for in this subsection, the department shall deny its application.

(b) The rail authority shall, within 60 days of receiving the snowmobile organization's application from the department, notify the department and the applicant in writing of one of the following:

(1) The rail authority has not been contacted by the snowmobile organization as is required by paragraph (a).

(2) The rail authority has no objection to the grant of a permit for the crossing:

(3) The rail authority and the snowmobile organization have agreed to a modification of the application and as modified, the rail authority has no objection to the grant of a permit for the crossing (in the event of a modified application, the snowmobile organization shall submit a modified application to the department within 60 days of the application); or

(4) The rail authority discussed the advisability and feasibility of the proposed rail crossing with the snowmobile organization in good faith, but despite those discussions, opposes the application. In such case, the rail authority shall specify the basis for its opposition.

If the department does not receive one of the above responses from the rail authority within 60 days from the date the application is sent to the rail authority, the department shall treat the lack of response as consent by the rail authority to the application.

(c) The department shall deny an application only if the department determines that the proposed snowmobile rail crossing does not comply with the rules promulgated under s. 350.137.

(d) The department shall approve an application if it receives a response from the rail authority as specified in paragraphs (b)(2) or (b)(3) of this subsection, and the application complies with the rules promulgated under s. 350.137.

(e) If the department receives a response as specified in paragraph (b)(4) of this section, the department shall hold a public hearing after giving notice of the hearing to the rail authority, the snowmobile organization, and the OCR. The hearing shall be a contested

case hearing under Ch. 227. Pursuant to Wisc. Stat. § 195.29(4), the OCR shall provide testimony at the hearing, or submit a written report for introduction into the hearing record, regarding the three standards listed below in (e) (1), (2) and (3) of this subsection. The OCR's testimony or report shall be given substantial weight by the department in deciding the matter, due to the OCR's expertise in this area. The department shall decide whether to issue a permit by determining whether or not the rail crossing is advisable and feasible based on, but not limited to, the following factors:

(1) Whether the proposed rail crossing could pose a substantial danger to public safety;

(2) Whether an existing crossing is located nearby which provides an adequate and accessible crossing for snowmobiles;

(3) Whether the proposed crossing would have a substantial adverse effect on railroad operations.

The department's final decision shall be reviewable under Wisc. Stat. Ch. 227.

(f) If the department issues a permit for the snowmobile rail crossing, the rail authority shall construct the portion of the crossing within four feet of the rail consistent with the rules promulgated under s. 350.137.

*extending
four feet
on either side*

(5) Charges. (a)(5) Charges.— The department may charge an initial application fee not to exceed \$150 (which shall accompany the application) 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.~~ (b) The snowmobile organization shall pay the rail authority \$1,500 at the time of permit issuance for the construction of and use of a snowmobile rail crossing or for the use of the right-of-way for the crossing, for which a permit has been granted.

(c) The charges allowed under this subdivision shall be reviewed every two years beginning January 1, 2002, and shall be adjusted for inflation consistent with any increase in the U.S. Department of Labor's Consumer Price Index from the effective date of this subsection.

(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 of, maintenance, existence, or use of a snowmobile rail crossing for which a permit is approved under this section, but this insurance shall not include any coverage for injuries sustained by a person engaged in a "recreational activity," as that term is defined in Wisc. Stat. § 895.52 so long as the recreational use immunity statute is in force. This insurance shall also provide coverage for costs that a rail authority incurs in defending against any lawsuit relating to the design, construction, maintenance, existence, or use of a snowmobile rail crossing. The applicable rail authority shall be named as an additional insured on the policy. 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 for

*use
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after
of date*

add

each \$2,000,000 per snowmobile organization. ~~Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000.~~ 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. The snowmobile organization shall furnish proof of the liability insurance policy to the applicable rail authority and the department on an annual basis beginning January 1, 2000.

~~(7) Rights of~~ (7) Rights-of way. For each application approved under sub. (4), the applicable rail authority shall give the snowmobile organization access to any right -of -way that the rail authority may have to permit the snowmobile organization to ~~construct and~~ maintain the snowmobile rail crossing.

~~(8) Revocation of permits. Terms of permits. (a) The initial period for a permit approved under this section shall be 11 years. Unless par. (b) applies, the department shall renew the permit for additional periods of time, not to exceed 11 years per renewal, as determined by the department, until the snowmobile rail crossing becomes an established snowmobile rail crossing.~~

~~(b) The department may revoke or refuse to renew a permit that it previously approved only if the department determines that the snowmobile rail crossing is not constructed or maintained in compliance with the rules promulgated under s. 350.137, and the department shall revoke a permit 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 shall begin on the first December 15 following the date of the issuance of the permit.~~

(9) Inspection authorized. The department or the OCR may inspect the site of a proposed crossing or a snowmobile rail crossing 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)~~.

WEST'S WISCONSIN STATUTES ANNOTATED
VEHICLES
CHAPTER 350. SNOWMOBILES

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Current through 1997 Act 338, published 7/3/1998

350.139. Established snowmobile rail crossings

(1) **Definitions.** In this section:

(a) "Established snowmobile rail crossing" means a snowmobile rail crossing that has been used maintained for use ^{by snowmobile org.} by snowmobiles for at least 5 winters of the last 10 years.

(b) "Rail authority" has the meaning given in s. 350.138(1)(b).

(c) "Rail transit body" has the meaning given in s. 350.138(1)(c).

(d) "Snowmobile organization" has the meaning given in s. 350.138(1)(f).

(2) **No permit required.** An established snowmobile rail crossing does not require a permit under s. 350.138.

(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 snowmobile organization.

(4) **Requirements.** The department shall require a snowmobile organization that uses or maintains portions of an established snowmobile rail crossing to do all of the following:

(a) Maintain the portions of the established snowmobile rail crossing ~~in conformance with~~ for which it is responsible under the rules promulgated ~~under~~ pursuant to s. 350.137.

(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, but this insurance shall not include any coverage for injuries sustained by a person engaged in a "recreational activity," as that term is defined in Wisc. Stat. § 895.52, so long as the recreational use immunity statute is in force. This insurance shall also provide coverage for all costs that a rail authority incurs in defending against any lawsuit relating to the design, construction, maintenance, existence, or use of a snowmobile rail crossing. The applicable rail authority shall be named as an additional insured on the policy. 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 ^{add?}

liability insurance that is required to be maintained under this paragraph shall be at least \$1,000,000 for each \$2,000,000 per snowmobile organization. ~~Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000.~~ 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. The snowmobile organization shall furnish proof of the liability insurance policy to the applicable rail authority and the department on an annual basis beginning January 1, 2000.

*use to
dep after
80 date*

(5) **Inspection authorized.** The department or the OCR 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).

WI ST 350.1395
W.S.A. 350.1395

WEST'S WISCONSIN STATUTES ANNOTATED
VEHICLES
CHAPTER 350. SNOWMOBILES

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Current through 1997 Act 338, published 7/3/1998

350.1395. Snowmobile rail crossings; closing; review of rail authorities; insurance rules

(1) **Definitions.** In this section:

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

(b) "Rail authority" has the meaning given in s. 350.138(1)(b).

(c) "Snowmobile organization" has the meaning given in s. 350.138(1)(f).

(2) **Closing of crossings.** ~~(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~~ if it enters into a written agreement with the snowmobile organization authorizing the closing or removal of the crossing. The rail authority shall notify the department of the agreement and the closing or removal of the crossing.

~~(b) 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 for an order authorizing 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~~ hold a public hearing on the petition after giving notice to the rail authority, snowmobile organization, and OCR. The hearing shall be a contested case hearing under ch. 227. Pursuant to Wisc. Stat. § 195.29(4), the OCR shall provide testimony at the hearing, or submit a written report for introduction into the hearing record, regarding the advisability of closing the snowmobile rail crossing in question. The OCR's testimony or report shall be given substantial weight by the department in deciding the matter, due to the OCR's expertise in this area. The department shall order closure or removal of the snowmobile rail crossing if it finds any of the following: (i) the crossing has not been maintained for use for at least 5 winters in the last 10 years; (ii) the crossing poses a substantial danger to public safety; (iii) another crossing is located nearby and will provide an adequate and accessible crossing for snowmobiles; or (iv) the crossing has a substantial adverse effect on railroad operations. If the department does not order closure or removal of the crossing, it shall deny the petition. The department's decision is reviewable under ch. 227.

(3) **Review of actions of rail authority and snowmobile organization.** A snowmobile organization ~~or rail authority~~ may request the department to review any failure of the rail authority ~~or the snowmobile organization~~ to comply with s. 350.138 or 350.139 ~~of, this section, or the rules promulgated under those sections.~~ 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, the department shall issue an order directing the rail authority ~~or snowmobile organization~~ to take appropriate action in order to comply with ~~this section~~ ss. 350.137, 350.138, 350.139, this section and rules promulgated thereunder. The order issued by the department is a final order of the department subject to judicial review under ch. 227.

(4) **Rules for liability insurance.** (a) The department may promulgate rules to increase the minimum amounts of liability insurance required under ss. 350.138(6) and 350.139(4)(b) based on the need for, and the availability and affordability of, such insurance.

(b) No rule may be promulgated under this subsection without ~~approval of the rule by the public service commission.~~ having consulted with the rail authorities, snowmobile organizations and OCR.

WI ST 195.29
W.S.A. 195.29

~~WEST'S~~ **WEST'S WISCONSIN STATUTES ANNOTATED**
TRANSPORTATION
CHAPTER 195. RAILROAD REGULATION

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Current through 1997 Act 338, published 7/3/1998

195.29. Railroad highway and snowmobile crossings

(1) **Petition, hearing, order.** Upon petition by the common council or board of any city, village, town or county within or bordering upon which a highway or street crosses a railroad, or a highway or street is proposed to be laid out across a railroad, or a public highway bridge across a railroad is required to connect existing streets or highways, or upon petition by any railroad whose track crosses or is about to cross, or is crossed or about to be crossed by a street or highway, or upon petition by the department, in cases where provision has been made for the improvement of the highway adjacent to such crossing under any state aid or federal aid law, that public safety requires an alteration in such crossing, its approaches, the method of crossing, the location of the highway or crossing, or the closing of the crossing, and the substitution of another therefor at grade or not at grade, or the removal of obstructions to the view at such crossing, the relocation of the highway, or requires the determination of the manner of making such new crossing, or of making the proposed improvement or promoting the public safety or public convenience through any other reasonable method, and praying that the same may be ordered, the office shall give notice to the parties in interest and proceed to investigate the same and to order a hearing thereon in the manner provided by s. 195.04. The office shall determine what, if anything, shall be done to promote the public safety and the means by which it shall be accomplished, whether by the relocation of the highway, the alteration in such crossing, approaches, mode of crossing, location of highway crossing, closing of highway crossing, with or without the substitution of another therefor, the construction of a public highway bridge, the removal of obstructions to sight at crossing, or by the use of other reasonable methods, and by whom the same shall be made, and in case of new crossings the advisability of allowing such crossings to be established and manner of making them.

(2) **Apportionment of expense.** The office shall fix the proportion of the cost and expense of alterations, removals and new crossings, or any other work ordered, including the damages to any person whose land is taken, and the special damages which the owner of any land adjoining the public street or highway shall sustain by reason of a change in the grade of such street or highway, or by reason of the removal of obstructions to view at such crossings, to be paid or borne by the railroad companies and the municipalities in interest. In fixing such proportion, the office may order such cost and expense so apportioned to be paid by the parties against which the apportionment shall be made.

(3) **Restoration of spur tracks.** Whenever the office shall have ordered a separation of the grade of a railway from the grade of a street or highway, it may, if safe and practicable and if a

necessity exists therefor, order the alteration, restoration and connection of any track serving an industry. Demand for such restoration shall be in writing and filed with the office within 90 days after the date of the order for the separation of grades, and any such track for which no such demand shall have been made shall be deemed abandoned. If the office shall order the alteration, restoration and connection of any such track, it shall by its order apportion the cost thereof between the owner of the industry served and the railway company, in such proportion as to the office may seem just and equitable; and the office shall in its order prescribe the terms and conditions for securing the payment of such cost.

(4) Snowmobile rail crossings. Whenever the Department of Natural Resources ("DNR") holds a public hearing pursuant to Wisc. Stat. § 350.138(4)(e) or Wisc. Stat. § 350.1395(2)(b), the OCR shall either provide testimony at the hearing, or provide a written report (which will become a part of the DNR's record), regarding the factors listed in s. 350.138(4)(e)(1), (2) and (3). The OCR's testimony or report shall be given substantial weight by the DNR in deciding the matter, due to the OCR's expertise in this area.

(5) Grade separation in Milwaukee County. The office may upon petition of any town, city or village, or upon its own motion, when the interests of the public demand it and it is found practicable so to do, establish the grade of the tracks of any railroad, or of all the railroads throughout any county having a population of 500,000 or more, or any part thereof, and the grades of the streets or highways, or any of them, where they cross such railroad track or tracks, in anticipation of the future separation of grades of the railroad tracks from the grades of such streets or highways. The office, before making any such order, shall mail notice to the railroad company or companies affected, the owners or occupants of any building abutting on that part of the railroad the grade of which is to be established, all 1st class cities in the county, and if the grades to be established are outside the 1st class city, the towns, cities or villages in which such grades are to be established, of the filing of such petition or that the office contemplates establishing such grades, and fixing a time at which the 1st class cities and such other towns, cities or villages and the railroad company or companies affected thereby and any other person or corporation interested therein may be heard. The grades so established under this subsection shall be described by reference to a base or datum line to be established by the office, from which all elevations and the height of all grades shall be measured, and the grades so established shall be such that when brought to the established grade the railroad tracks will cross the streets and highways above or below the same. Such order shall not necessarily require a present change in grade but the office may at any time order the railroad track or tracks and the street and highways brought to the grade established or any street or highways closed by the order, in accordance with sub. (1), and may, at the time of making the order, apportion the cost of separating the grades as provided in sub. (2).

(5)(6) Elimination of grade crossings, costs. Upon petition of the department, or of the common council or board of any city, village, town or county, alleging that one or more of them have undertaken or propose to undertake to relocate or improve an existing highway or to construct a new highway in such manner as to eliminate a highway grade crossing with any railroad or so as to permanently divert a material portion of the highway traffic from a highway grade crossing with any railroad, the office shall issue notice of investigation and hearing, as provided in s. 195.04. If upon such hearing the office finds that the public safety will be promoted by the highway relocation, improvement or new construction, the office shall order the

old crossings closed and new crossings opened as are deemed necessary for public safety. The order shall require the railroad company or companies to pay to the interested municipality or municipalities such sum as the office finds to be an equitable portion of the cost of the highway relocation, improvement or new construction, if the work is performed by the municipalities; or to the state treasurer if the work is performed by the state; or to the proper county treasurer if the work is performed by the county. The sum shall be added to the joint fund available for the improvement and may be expended in like manner as the other portions of the fund.

~~(6)~~(7) **View at crossings; trees and brush near crossings; forfeiture.** Every railroad shall keep its right-of-way clear of brush or trees for a distance of not less than 330 feet in each direction from the center of its intersection at grade with any public highway, and for such further distance as is necessary to provide an adequate view of approaching trains, from the highway. Every municipality shall keep the public highways within its jurisdiction clear of brush and shall adequately trim all trees within 330 feet of the center of any railroad highway grade crossing. Every person or corporation owning or occupying any land adjacent to any railroad highway grade crossing shall keep all brush cut and adequately trim all trees on the land within the triangles bounded on 2 sides by the railway and the highway, and on the 3rd side by a line connecting points on the center lines of the railway and the highway, 330 feet from the intersection of the center lines. The office, upon its own motion, or upon any complaint to the effect that any work required by this subsection has not been performed, after due notice and hearing, may order the corporation, municipality or person at fault to perform the work; provided, however, that if the physical conditions at any crossing are such that the performance of the required work will not materially improve the view for highway traffic, or, if unreasonable loss would be caused thereby, the office may excuse the party in interest from performing the same. The office may also order the cutting of brush and the trimming of trees at private farm crossings as may be necessary and reasonable. If any person shall violate any provision of this section, or shall fail, neglect or refuse to obey any order made by the office under this section, or any judgment or decree made by any court upon such an order, for every such violation, failure or refusal such person shall forfeit not less than \$25 nor more than \$150.

~~(7)~~(8) **Structure requirements.** Whenever the office shall order the construction or reconstruction of a crossing not at grade, it may direct that the structure required shall be of such character and constructed of such materials as it shall deem appropriate to the situation and necessary for the public interest.

~~(8)~~(9) **Acquisition of lands.** Any lands needed to carry out the provisions of this section may be acquired.



State Senator
Chuck Chvala
SENATE MAJORITY LEADER

FAX COVER SHEET

TO: Robin KITE

FROM: Doug, Sen. Chvala's office

RE: _____

PAGES: 3 (Including Cover)

DATE: 1-10-00

NOTES

Robin - This should modify the request on this issue sent last week. Thanks - Doug



State of Wisconsin | DEPARTMENT OF NATURAL RESOURCES

Tom G. Thompson, Governor
George E. Meyer, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

December 30, 1999

SENT BY FAX AND FIRST CLASS MAIL

MARC SIMPSON
LEONARD STREET AND DEINARD
150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS MN 55402

RONALD RAGATZ
DEWITT ROSS AND STEVENS
2 E MIFFLIN ST SUITE 600
MADISON WI 53703 -2865

Subject: Soo Line Railroad v. Tommy Thompson, et.al.

Dear Mr. Simpson and Mr. Ragatz:

DNR has reviewed the draft legislation provided by Mr. Simpson on December 27, 1999. While we have a few comments on the draft, overall we think it represents a good compromise of the various parties' interests in this matter. We did not have time to review the proposed changes in ch. NR 6, Wis. Adm. Code, in detail at this time. We likely will have additional comments on the rules as this process moves forward. However, since getting the legislation passed is most critical at this juncture, we will defer further comments on the proposed rules and just provide some final comments on the proposed statutes.

Section 350.138

In sub. (3) the second sentence should start "A snowmobile organization shall file an application...". Use of the mandatory "shall" is customary for Wisconsin legislative drafting. Also, the references in this subsection to DNR should refer to the "Department". We also suggest that a date should be added to sub. (3) indicating a date by which the railroads should submit a list of designated agents to the Department.

In sub. (4)(a), we suggest that the snowmobiler's first contact with the railroad be "in writing", with a mandatory copy to DNR. This will provide DNR with knowledge and proof of the club's contact with the railroad.

In sub. (4)(b)(intro.), this should probably read "...within 60 days of the date the application is sent to the rail authority...", since DNR will not know the date of receipt by the rail authority. This timing is also consistent with the provision at the end of (4)(b)4., which states "...within 60 days from the date the application is sent to the rail authority...".

In sub. (4)(b)3., again should this 60 day period commence on the date the application is sent to the rail authority?

Quality Natural Resources Management
Through Excellent Customer Service



FROM : DNR ADMINISTRATION

In sub. (4)(e), we should add another factor, that being whether the proposed crossing meets the requirements of the rules promulgated under s. 350.137, Stats. While this may be implied by previous sections, we believe this should be explicitly stated in this section dealing with contested applications.

In sub. (5)(b), we should state a time period after issuance of the permit for the snowmobile organization to pay the rail authority, i.e. 30 days?

In sub. (6), last sentence, rather than referring to Jan. 1, 2000, which is almost upon us, we suggest referring to a date 60 days after the effective date of the amendments.

In sub. (7), we question the crossing out of the word "construct". It appears the snowmobile organization may need access to the right of way to construct as well as to maintain the crossing. Are the railroads asserting that the right of way only extends to 4 feet beyond the track and since they are building that portion, the club does not need access to the right of way?

Section 350.139

In sub. (4)(b), last sentence, rather than referring to Jan. 1, 2000, we suggest referring to a date 60 days after the effective date of the amendments.

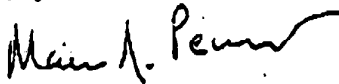
Section 350.1395

The definition in (1)(a) of an "established snowmobile rail crossing" should be exactly the same as the definition in s. 350.139(1)(a), Stats. Instead of repeating it here, just refer to the definition in s. 350.139(1)(a), Stats.

In sub. (4), we may wish to state here that the increase in fees due to the increase in the Consumer Price Index (CPI) need not be accomplished by rulemaking. This would relieve the DNR from the duty to revise its rules every 2 years solely to reflect the change in the CPI.

With these minor changes, we believe that DNR can support the proposed changes to the statutes. We appreciate the opportunity to work with you to resolve these issues. Please let me know if DNR can assist with efforts to get this proposed legislation drafted and introduced. If you have any questions, please contact me at (608)266-2132.

Sincerely,



Marcia J. Penner
Attorney at Law
Bureau of Legal Services

Cc: John Gliński-DOJ
Larry Freidig-CF/S
Elizabeth Kluesner-AD/S
Doug Wood-OCR



Friday 12-18-00
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4175/P1
RNK.../:...
Wlj

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen Cat

1 AN ACT ...; relating to: the regulation of snowmobile rail crossings.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

Insert from 4-13
Insert from 11-16
WSCA
1-2

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

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

3 350.137 (1) The department, after having consulted with the snowmobile
4 recreational council rail authorities, as defined in s. 350.138 (1) (b), snowmobile
5 organizations, as defined in s. 350.138 (1) (a) 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.

History: 1993 a. 120.

****NOTE: This provision is vague because it does not state which, and how many, rail authorities and snowmobile organizations the DNR must consult before promulgating rules!

SECTION #. RP; 350.137(3)^v

1 SECTION 2. 350.137 (2) (a)^v of the statutes is amended to read:

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

History: 1993 a. 120.

****NOTE: How close must a snowmobile operator be to a proposed crossing to be considered to be on the "approach" to the crossing? ~~you might want to~~ ^{I suggest that you} define the term "approach" as it applies to a proposed crossing.

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

7 350.137 (3) ~~No rule may be promulgated~~ The department of natural resources
8 may not promulgate a rule under this section without the approval of the rule by the
9 public service commission first consulting with rail authorities, snowmobile
10 organizations and the office of the commissioner of railroads.

History: 1993 a. 120.

****NOTE: ^{and} ~~This provision is vague because it does not specify which, or how many,~~ ^{DNR} ~~rail authorities or snowmobile organizations~~ ^{which, and} ~~must consult before promulgating rules.~~ ^{or simply to require} ~~Also, did you intend to require that the rail authorities, snowmobile organizations and the office of the commissioner of railroads approve the rules?~~ ^{that they be consulted}

Insert
2-10

11 SECTION 4. 350.138 (2m)^v of the statutes is created to read:

12 350.138 (2m) DESIGNATION OF AGENTS. Each rail authority ~~that owns rail lines~~
13 in this state shall furnish the department with the name and address of an agent who
14 is authorized on behalf of the rail authority to receive ^{copies} ~~notice~~ of a snowmobile crossing
15 ~~permit from~~ ^{application filed with} the department.

16 SECTION 5. 350.138 (3)^v of the statutes is amended to read:

17 (17) 350.138 (3) ~~CONTENTS OF PROCEDURES FOR PERMIT APPLICATION.~~ CONTENTS OF PROCEDURES FOR PERMIT APPLICATION. An application
18 submitted under sub. (2)^v shall include adequate descriptions and drawings showing
19 the proposed location of the snowmobile rail crossing, the design of the snowmobile
20 rail crossing and the location of snowmobile trails that connect with the snowmobile

CS
§ **** Note: ^{As suggested by DNR,} do you want to specify when the rail authority must furnish the name and address of its agent?

****NOTE: Do you want to specify the period within which DNR must approve an application that meets the required conditions? Immediately thereafter

1 rail crossing. The department shall, upon receipt of an application submitted under
2 sub. (2), send a copy of the application to the agent designated under sub. (2m) for
3 the applicable rail authority and shall, ~~at the same time~~ send notice to the applicant
4 that a copy of the application was sent to the designated agent. The department may
5 reject an application within 15 days after it is submitted if the application is
6 incomplete or is not sufficiently detailed to determine whether to approve or deny the
7 application.

History: 1993 a. 120.

SECTION #. 350.138 (4) of the statutes is ^{renumbered 350.138(4)(a) and} amended to read:

350.138 (4) ^{(a) (intro.)} ~~PERMIT APPLICATION APPROVAL AND DENIALS. (a)~~ The Except as
provided under par. (e), 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 ~~and grant the~~
~~applicant a permit~~ 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 #. OR 350.138 (4)(a) 1, 2, and 3.

16 1. The applicant contacted the applicable rail authority within 30 days ^{after} ~~from the~~
^{Comma} date that the department sent a copy of the application to the applicable rail
17 authority to discuss the advisability and feasibility of the proposed rail crossing.

****NOTE: The "purpose" language in this subdivision is vague. Must the ~~rail~~
^{applicant} ~~authority~~ make only a contact within 30 days or must a discussion take place within 30
18 days. Also, do you want to specify what form the contact must take?

19 2. The rail authority did not file an objection to the application within 60 days
after receiving notice ^{under sub. (3)} ~~(of the filing of the application from the department)~~ or did not
20 object, within that period, to a modification of the application as agreed to by the rail
21 authority and the applicant.

23 3. The application complies with the rules promulgated under s. 350.137.

350.138 (4)(a)

(intro.)

~~and grant the~~

Plain text

if the conditions under par. (a) 1. and 3. are met,

SECTION 7. 350.138 (4) (b) of the statutes is created to read:

350.138 (4) (b) The department shall hold a public hearing on the application if the rail authority files an objection with the department to the application within 60 days after receiving notice of the filing of the application and the objection contains 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.

SECTION 8. 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, 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 final decision shall be reviewable under ch. 227.

SECTION 9. 350.138 (4) (d) of the statutes is created to read:

350.138 (4) (d) The office of the commissioner of railroads shall give testimony at the hearing under par. (b) or shall submit a written report for introduction into the hearing record that addresses the issues stated in par. (e) 1., 2. and 3.

****NOTE: Your draft language includes a cross-reference to s. 195.29 (4) of the statutes but that provision does not seem relevant here. Is this the correct cross-reference?

SECTION 10. 350.138 (4) (e) of the statutes is created to read:

350.138 (4) (e) 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 par. (d) if the department finds that the proposed snowmobile crossing is advisable and feasible. The factors that the department shall consider in determining whether the proposed snowmobile crossing is advisable and feasible shall include all of the following:

Move to before 1-2

WFO. 504. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23.

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

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

3 2. Whether an existing ^{a snowmobile rail} crossing that is located near the proposed ^{snowmobile rail} crossing
4 provides an adequate crossing for snowmobiles.

5 3. Whether the proposed ^{snowmobile rail} crossing would have a substantial adverse effect on
6 railroad operations.

7 ~~(f) If the department issues a permit under this section, the applicable rail
8 authority shall construct that portion of the crossing that is within 4 feet of the rail
9 in accordance with the rules promulgated under s. 350.137.~~

10 SECTION 11. 350.138 (5) of the statutes is renumbered 350.138 (5) (a) and
11 amended to read:

12 (12) 350.138 (5) (a) CHARGES. The department may charge an initial application fee
13 not to exceed \$150 for the costs of reviewing a permit application under sub. (4).
14 Neither a rail authority nor the department may charge any other fee or amount for
15 the construction or use of a snowmobile rail crossing or for the use of the
16 right-of-way for the crossing. If the department charges the fee, the applicant must
17 include the fee with the permit application.

18 History: 1993 a. 120.
19 SECTION 12. 350.138 (5) (b) of the statutes is created to read:

20 350.138 (5) (b) Except as provided under par. (c), if the department issues a
21 permit to an applicant under this section, the applicant shall pay the rail authority
22 \$1,500 ^{within 30 days after the date on which} at the time the permit is issued to compensate the rail authority for the ^{the}
23 cost of ^{constructing the snowmobile rail crossing} the construction and to pay for the use of the snowmobile crossing by ^{the} ~~persons~~
^{participating in snowmobiling} snowmobile operators

*** Note: This provision specifies that the rail authority must construct that portion of the crossing that is within 4 feet of the rail in accordance with DPR rules under s. 350.137. The rules (NR 6.43) seem to suggest that this provision should refer to 2 feet on either side of the rail.

****NOTE: This provision requires a successful applicant to pay a \$1,500 fee at the time a permit is granted. I think this provision needs to specify when the payment must be made, for example, within a particular number of days.

SECTION 13. 350.138 (5) (c) of the statutes is created to read:

350.138 (5) (c) Biennially, beginning January 1, 2002, the department shall adjust the fee under par. (b) by a percentage that is equal to the percentage change between 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 and the U.S. consumer price index for all urban consumers, U.S. city average for the 24 month period ending on the 2nd preceding December 31.

SECTION 14. 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 under this section, 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 snowmobile organization 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. 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

on the first day of the 3rd month beginning after the effective date of this subsection... [revisor inserts date]

SECTION 14

1 of any railroad using the tracks of the rail transit body. Annually, beginning
2 1/1/2001 each snowmobile organization that is required to maintain liability
3 insurance under this subsection shall furnish proof of that insurance to the
4 applicable rail authority and to the department.

History: 1993 a. 120.

****NOTE: ~~My draft language stated that proof of insurance must be furnished beginning January 1, 2000. Because that date has passed, I used January 1, 2001 as the beginning date. Is this O.K.? Also, I did not include that part of the draft language that provides that the "applicable rail authority shall be named as an additional insured on the policy" because under this provision, given that the snowmobile organization must maintain liability insurance to indemnify the rail authority, the rail authority is presumably already the insured.~~

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

6 350.138 (7) RIGHTS-OF-WAY. For each application approved under sub. (4), the
7 applicable rail authority shall give the snowmobile organization access to any
8 right-of-way that the rail authority may have to permit the snowmobile
9 organization to construct and maintain the snowmobile rail crossing.

History: 1993 a. 120.

10 SECTION 16. 350.138 (8) (title) of the statutes is amended to read:

11 350.138 (8) (title) ~~TERMS~~ REVOCATION OF PERMITS.

History: 1993 a. 120.

12 SECTION 17. 350.138 (8) (a) of the statutes is repealed.

****NOTE: The repeal of this provision eliminates any reference to the period for which a permit may be issued. *or renewed* Is this consistent with your intent?

13 SECTION 18. 350.138 (8) (b) of the statutes is *renumbered 350.138 (8)* and amended to read:

14 350.138 (8) (b) The department may revoke *issued* or refuse to renew a permit that
15 it ~~previously approved only~~ *issued* if the department determines that the snowmobile rail
16 crossing is not constructed or maintained in compliance with the rules promulgated
17 under s. 350.137, the . The department *must* shall revoke a permit that it ~~previously~~
18 *approved* *issued* if the snowmobile organization does not maintain any liability insurance
19 that is required under sub. (6) or the snowmobile rail crossing is not maintained for

*vlpn:
please
fix comment*

1 use by snowmobiles for at least 5 winters in any 10-year period. The 10-year period
 2 for purposes of this ~~paragraph~~ ^{subsection} shall begin on the first December 15 following the date
 3 of the issuance of the permit.

History: 1993 a. 120.

4 SECTION 19. 350.138 (9) of the statutes is amended to read:
 5 350.138 (9) INSPECTION AUTHORIZED. The department or the office of the
 6 commissioner of railroads may inspect the site of a proposed or existing snowmobile
 7 rail crossing to determine whether there are grounds to refuse to issue a permit
 8 under sub. (4) or to revoke ~~or refuse to renew~~ a permit under sub. (8) ~~(b)~~.

History: 1993 a. 120.

9 SECTION 20. 350.139 (1) (a) of the statutes is amended to read:
 10 350.139 (1) (a) "Established snowmobile rail crossing" means a snowmobile rail
 11 crossing that has been used ~~maintained for use~~ by snowmobiles for at least 5 winters
 12 of the last 10 years.

History: 1995 a. 120.

13 SECTION 21. 350.139 (3) of the statutes is amended to read:
 14 350.139 (3) CHARGES PROHIBITED. Neither the department nor a rail authority
 15 may charge a fee or any other amount for the use of an established snowmobile rail
 16 crossing or for the use of a right-of-way for the established snowmobile rail crossing,
 17 unless otherwise agreed upon by the rail authority and a snowmobile organization,
 18 the members ^{or residents} of which use the crossing.

History: 1993 a. 120.

Insert
8-18

19 SECTION 22. 350.139 (4) (intro.) of the statutes is amended to read:
 20 350.139 (4) ~~REQUIREMENTS~~ (intro.) The department shall require a ^{any part of}
 21 snowmobile organization that maintains ~~for whose members use all or part of~~
 22 established snowmobile rail crossing to do all of the following:

History: 1993 a. 120.

23 SECTION 23. 350.139 (4) (a) of the statutes is amended to read:

^{CS}
 Note: This amended language could lead to the
 result that DNR may not refuse to renew a permit. Is
 this consistent with your intent?

on the first day of the 3rd month beginning after the effective date of this paragraph. . . . [revisor inserts date]

1 350.139 (4) (a) Maintain that part of the established snowmobile rail crossing
2 ~~in conformance with the rules promulgated~~ ^{that it maintains} in accordance with the rules promulgated
3 under s. 350.137.

History: 1993 a. 120.

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

5 350.139 (4) (b) Maintain in effect liability insurance to indemnify the
6 applicable rail authority for damages resulting from the design, construction or
7 maintenance, [↓] existence or use of the established snowmobile rail crossing, except
8 that the department shall not require the snowmobile organization to maintain in
9 effect liability insurance to indemnify the applicable rail authority for injuries
10 sustained by a person engaged in a recreation activity, if the snowmobile
11 organization would be immune from liability for those injuries under s. 895.52. ✓

12 Regardless of the number of established snowmobile rail crossings and snowmobile
13 rail crossings under s. 350.138 that each snowmobile organization maintains, the
14 amount of the liability insurance that is required to be maintained under this
15 paragraph shall be at least \$1,000,000 \$2,000,000 for each snowmobile organization.
16 ~~Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000.~~
17 Any liability insurance that is required under this paragraph for the purpose of
18 indemnifying a rail authority that is a rail transit body shall also indemnify the
19 owners and operators of any railroad using the tracks of the rail transit body.
20 Annually, beginning ~~January 1, 2001~~ ^{1/1/01}, each snowmobile organization that is required
21 to maintain liability insurance under this paragraph shall furnish proof of that
22 insurance to the applicable rail authority and to the department.

History: 1993 a. 120.

****NOTE: Please see the Note following amended s. 350.138 (6) in this ~~draft~~ ^{bill}

*Insert ↓
9-22 →*

SECTION 25. 350.139 (5) of the statutes is amended to read:

SECTION #. RP; 350.1395 (1) (a) ✓

1 350.139 (5) INSPECTION AUTHORIZED. The department or the office of the
2 commissioner of railroads may inspect an established snowmobile rail crossing to
3 determine whether the snowmobile organization maintaining the crossing is in
4 compliance with the requirements imposed under sub. (4).

History: 1993 a. 120.

5 SECTION 26. 350.1395 (title) ✓ of the statutes is amended to read:

6 350.1395 (title) **Snowmobile rail crossings; closing and removal; review**
7 **of rail authorities; insurance rules.**

History: 1993 a. 120.

8 SECTION 27. 350.1395 (1) (a) of the statutes is amended to read:

9 350.1395 (1) (a) "Established snowmobile rail crossing" means a snowmobile
10 rail crossing that has been used by snowmobiles or that has been maintained for
11 snowmobile use for at least 5 winters of the last 10 years.

History: 1993 a. 120.

***NOTE: Do you want to clarify who must have maintained the snowmobile rail crossing before it may qualify as an established crossing?

12 SECTION 28. 350.1395 (2) (a) ✓ of the statutes is amended to read:

13 350.1395 (2) (a) ~~Except as provided in par. (b), no~~ A rail authority may close
14 or remove a snowmobile rail crossing ~~subject to a permit under s. 350.138 or an~~
15 ~~established snowmobile rail crossing~~ if it enters into a written agreement with the
16 snowmobile organization under which the snowmobile organization agrees to close
17 or remove the snowmobile rail crossing. Each rail authority that enters into a
18 written agreement with a snowmobile organization to close or remove a snowmobile
19 rail crossing shall notify the department ~~that~~ ^{of} the agreement ~~was entered into~~ and
20 that the snowmobile rail crossing has been closed or removed. ← plain period

History: 1993 a. 120.

***NOTE: What snowmobile organization has the authority to enter into an agreement under this provision? Presumably the organization must have some connection to the crossing. What must that connection be?

allow the rail authority to

1 SECTION 29. 350.1395 (2) (b) of the statutes is renumbered 350.1395 (2) (b) 1.
2 and amended to read:

insert 11-9

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.

History: 1993 a. 120.

9 SECTION 30. 350.1395 (2) (b) 2. of the statutes is created to read:

10 350.1395 (2) (b) 2. The department shall hold a ~~public~~ hearing on a petition
11 filed under subd. 1. after giving notice of the hearing to the rail authority, snowmobile
12 organization and the office of the commissioner of railroads. The hearing shall be a
13 contested case hearing under ch. 227. The department's final ~~decision shall be~~
14 ~~reviewable~~ *order shall be a* *order subject to judicial review* under ch. 227.

15 SECTION 31. 350.1395 (2) (b) 3. of the statutes is created to read:

Sec. 4
ch. 195.03 (30) (b) 1

16 195.03 (30) 350.1395 (2) (b) 3. The office of the ~~commissioner of railroads~~
17 department ^{of natural resources} its opinion on whether the snowmobile crossing should be closed or
18 removed in testimony at the hearing under ~~subd.~~ ^{s. 350.1395 (2) (b)} 2. or in a written report for
19 introduction into the hearing record.

LPo:
5-7
drafts

Move to before
1-2

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

21 350.1395 (2) (b) ^{3.} ~~4.~~ The department shall grant a rail authority's petition under
22 subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under subd.
23 2., and after giving substantial weight to the ^{3.} testimony or report given under ~~subd.~~
24 ^{s. 195.03 (30) (b)} the department finds that any of the following apply:

office of the
commissioner of
railroads

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

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

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

****NOTE: You might consider clarifying the meaning of the terms "adequate" and
"accessible". For example, adequate for what purpose? Accessible to whom?

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

9 SECTION 33. 350.1395 (3) of the statutes is amended to read:

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

History: 1993 a. 120.

****NOTE: Your ^{suggested} draft language contained a cross-reference to s. 350.137 in that part
of this provision that refers to the failure of a rail authority or snowmobile organization
to comply. Because s. 350.137 concerns only the department's rule-making
requirements, that cross-reference seems inappropriate and, therefore, I did not include
it.

21 SECTION 34. 350.1395 (4) (b) of the statutes is amended to read:

1 350.1395 (4) (b) ~~No rule may be promulgated~~ The department may not
2 promulgate a rule under this subsection without ~~approval of the rule by the public~~
3 ~~service commission~~ first consulting with rail authorities, snowmobile organizations
4 and the office of the commissioner of railroads.

History: 1993 a. 120.

****NOTE: Which rail authorities and snowmobile organizations must the
department consult?

(END)

insert
1-2

Sec. #. CR; 195.307

① 195.307 Snowmobile rail crossings @ Sections 195.28₅

and
195.28₅ 195.28₆ 195.29 do not apply

to snowmobile rail crossings for which
a permit is issued under s. 350.138.✓

(end insert)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4175/Plins
RNK.....

Insert 2-10
SECTION ~~1~~[#]. 350.138 (2)[✓] of the statutes is amended to read:

350.138 (2) PERMIT REQUIRED. No person may construct a snowmobile rail crossing that is not located on a railroad crossing of a ~~public~~^{strike✓} highway or street unless the person is a snowmobile organization and has a permit ~~approved~~^{approved} issued under this section. No person may maintain a snowmobile rail crossing that is not located on a railroad crossing of a ~~public~~^{strike✓} highway or street unless the person is a snowmobile organization and either the person has a permit ~~approved~~^{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.

History: 1993 a. 120.

Insert 8-18
SECTION ~~2~~[#]. 350.139 (4) (title)[✓] of the statutes is amended to read:

350.139 (4) (title) ~~REQUIREMENTS~~ MAINTENANCE REQUIREMENTS.

History: 1993 a. 120.

Insert 9-22
SECTION ~~3~~[#]. 350.139 (4m)[✓] of the statutes is created to read:

350.139 (4m) USER REQUIREMENTS. The department shall require a snowmobile organization that uses any part of an established snowmobile rail crossing to maintain in effect liability insurance as provided under sub. (4) (b).[✓]

Nft

Subdivision

Insert 11-9

The rail authority may file a petition under this paragraph without requesting or obtaining a written agreement from the snowmobile organization to close or remove the snowmobile rail crossing.

D-Note

If I have prepared this draft in preliminary form to give you an opportunity to review, ^{and respond to} ~~the notes~~ the issues raised in the notes throughout the draft. I would be happy to meet with you to discuss ~~these~~ ^{these}, or any other issues, relating to this draft at your convenience.

RNK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4175/P1dn
RNK:wlj:jf

February 18, 2000

I have prepared this draft in preliminary form to give you an opportunity to review and respond to the issues raised in the notes throughout the draft. I would be happy to meet with you to discuss these, or any other issues, relating to this draft at your convenience.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: Robin.Kite@legis.state.wi.us