

**LEONARD, STREET AND DEINARD**

PROFESSIONAL ASSOCIATION

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# LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

February 24, 2000

James J. Sticha  
612-335-1917  
jjs1917@leonard.com

VIA FACSIMILE AND U.S. MAIL

2-25-00

Robin N. Kite  
PO Box 2037  
Madison, WI 53701

*Per Doug Burnett -  
Redraft per these instructions*

Dear Ms. Kite:

I am writing in regard to the preliminary draft of LRB-4175/P1. This draft has been sent to the Association of Wisconsin Snowmobile Clubs and the interested Wisconsin state agencies. I have received comments from these parties and we all agree that this draft is in excellent condition. As a result, the proposed revisions to this draft are very minor.

In an effort to make your job easier and to expedite the process, I have consolidated the comments of the parties below, and you should be aware that all parties are in agreement as to these comments and proposed changes.

✓ Note on Page 2, after Line 20: The DNR should consult with the Association of Wisconsin Snowmobile Clubs, Inc., and the rail authorities who register under s. 350.138 (2m).

✓ Note on Page 3, after Line 2: The rules will take care of this.

*delayed*  
✓ Note on Page 3, after Line 19: The rail authority should furnish the name and address of its agent within 90 days of the effective date of the legislation.

✓ Section 9, Line 6: After the word "designated agent," add the phrase, "including in the notice the name and address of the representative of the rail authority to which the application was sent."

✓ Note on Page 4, after Line 17: The DNR must approve the application within 30 days after the expiration of the 60 day period in which the rail authority has to object.

✓ Note on Page 4, after Line 23: Section 11 should provide (after the phrase "contacted the applicable rail authority,") "in writing to attempt to discuss the advisability and feasibility of the proposed rail crossing. The snowmobile organization shall furnish a copy of the written letter to the department."

✓ Section 11, Line 1 on page 5: The phrase "with the department" should be added after the word "objection."

Robin N. Kite  
February 24, 2000  
Page 2

*analyze*  
✓ Insert 350.138(4)(f): This is an important provision that all parties believe should be included in the revised legislation. This provision was omitted in the preliminary draft.

✓ Section 12: After the word "application" (on line 11) add the phrase, "and the objection contains a statement of the basis for the rail authority's objection."

✓ Section 14: This subsection should become (4)(d) rather than (4)(e). In addition, the sentence beginning on line 21 should be changed to "The department's decision shall be based on, but not limited to, the following factors."

*no  
Draft*  
✓ Section 15, Line 13: "Must" should be changed to "shall."

✓ Section 18, Line 9: Delete the phrase "snowmobile organization" and insert "rail authority."

✓ Note on Page 7, after Line 21: A sentence should be included which states, "The applicable rail authority shall be named as an insured on the policy." This may be somewhat repetitive, but it clears up any ambiguity.

✓ Section 19, Line 4: The phrase "construct and" should remain.

✓ Note on Page 8, after Line 7: Yes, this is the intent. A permit will be permanent until revoked.

*no*  
✓ Section 22, Line 13: "Must" should be changed to "shall."

✓ Section 23, Line 21: The phrase "the site of a proposed or existing snowmobile rail crossing" should be changed to "the site of a proposed or permitted snowmobile rail crossing."

✓ Section 23, Line 23: The phrase "or refuse to renew" should be deleted.

✓ Note on Page 9, top of Page: Yes, this is consistent with the intent.

✓ Insert proposed revision to 350.139(1)(a): We had proposed an amendment to 350.139(1)(a) which was not included in the preliminary draft. This should be included. The change substitutes "maintained for use" for "used."

✓ Section 24, Line 6: This phrase should be deleted.

✓ Section 26, Line 11: The phrase "or uses" should be inserted after "maintains." Section 29 could therefore be eliminated.

✓ Section 27, Lines 14-16: This subsection should state, "Maintain that part of the established snowmobile rail crossing for which it is responsible under the rules promulgated under s. 350.137."

Robin N. Kite  
February 24, 2000  
Page 3

- ✓ Section 28, Line 23 onto the next Page: The phrase "snowmobile organization" should be deleted and replaced with "rail authority."
- ✓ Note on Page 10, after Line 13: The phrase "the applicable rail authority shall be named as an insured on the policy" should be included to clear up any ambiguity.
- ✓ Section 29: Should be eliminated.
- ✓ Note on Page 11, after Line 12: Section 350.1395(2)(a) should provide that after the phrase "snowmobile organization" on line 8, "that holds the permit or, if there is no permit, then the one that maintains the crossing according to s. 350.139."
- ✓ Note on Page 12, after Line 18: The terms should be left as is.
- D-note* ✓ Section 37: The references to various statutes at lines 2 and 5 should include s. 350.137.
- ✓ Note of Page 13, after Line 14: The DNR should consult with the Association of Wisconsin Snowmobile Clubs, Inc. and the rail authorities who register under s. 350.138 (2m).

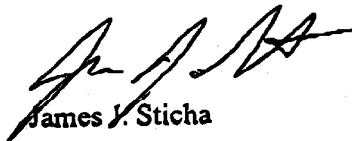
I anticipate that these will be the final revisions from the interested parties. I think it would be best, however, if we could see the draft one more time after these changes are incorporated. I will then send the revised draft to all interested parties, and we can all hopefully sign off on the revised draft.

Thank you very much for the time and effort you have devoted to this matter. We are all extremely pleased with this preliminary draft and hope we can have this bill ready for introduction shortly.

If you have any questions, please do not hesitate to call me at 612-335-1917.

Very truly yours,

LEONARD, STREET AND DEINARD

  
James J. Sticha

JJS/jkm

cc: Ron Ragatz, Esq.  
John Glinski, Esq.  
Marcia Penner, Esq.  
Marc Simpson, Esq.  
John Bergene



(soon)  
State of Wisconsin  
1999 - 2000 LEGISLATURE

RNR  
P2  
LRB-4175/1  
RNK:wlj:jf

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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 (7), 350.138 (8) (title), 350.138 (9), 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. and 3., 350.138 (4)  
8 (b), 350.138 (4) (c), 350.138 (4) (e), 350.138 (5) (b), 350.138 (5) (c), 350.139 (4m),  
9 350.1395 (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*

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

*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) (e) 1., 2. and 3.

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:

15 350.137 (1) The department, after having consulted with the snowmobile  
16 recreational council <sup>each</sup> ~~rail authorities~~ <sup>authority</sup>, as defined in s. 350.138 (1) (b), <sup>in this state,</sup> ~~snowmobile~~  
17 ~~organizations, as defined in s. 350.138 (1) (b)~~ and the office of the commissioner of  
18 railroads, shall promulgate rules to establish uniform maintenance standards and  
19 uniform design and construction standards for snowmobile rail crossings under ss.  
20 350.138 and 350.139.

\*\*\*\*NOTE: Which, and how many, rail authorities and snowmobile organizations  
must the DNR consult before promulgating rules?

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

22 350.137 (2) (a) Preclude the use of a proposed site for a snowmobile rail crossing  
23 because the site would be unsafe due to poor visibility of the proposed snowmobile

an established snowmobile association that represents snowmobile clubs, as defined in s. 350.138(1)(e), in this state.

1 ~~rail crossing from the cab of a railroad engine an approaching train from the position~~  
2 ~~of a snowmobile operator who is stopped on the approach to the proposed crossing.~~

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

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

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

5 350.138 (2) PERMIT REQUIRED. No person may construct a snowmobile rail  
6 crossing that is not located on a railroad crossing of a public highway or street unless  
7 the person is a snowmobile organization and has a permit ~~approved~~ issued under this  
8 section. No person may maintain a snowmobile rail crossing that is not located on  
9 a railroad crossing of a public highway or street unless the person is a snowmobile  
10 organization and either the person has a permit ~~approved~~ issued under this section  
11 or the snowmobile rail crossing is an established snowmobile rail crossing. In order  
12 to obtain a permit required under this section, a snowmobile organization shall apply  
13 to the department. A separate permit is required for each snowmobile rail crossing  
14 subject to this section.

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

16 350.138 (2m) DESIGNATION OF AGENTS. Each rail authority in this state shall  
17 furnish the department with the name and address of an agent who is authorized on  
18 behalf of the rail authority to receive copies of snowmobile crossing permit  
19 applications filed with the department.

\*\*\*\*NOTE: As suggested by DNR, do you want to specify when the rail authority must furnish the name and address of its agent?

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

21 350.138 (3) ~~CONTENTS OF PROCEDURES FOR~~ PERMIT APPLICATION. An application  
22 submitted under sub. (2) shall include adequate descriptions and drawings showing

**SECTION 9**

*The notice to the applicant must include the name and address of the designated agent to whom the department sent a copy of the application.*

1 the proposed location of the snowmobile rail crossing, the design of the snowmobile  
2 rail crossing and the location of snowmobile trails that connect with the snowmobile  
3 rail crossing. The department shall, upon receipt of an application submitted under  
4 sub. (2), send a copy of the application to the agent designated under sub. (2m) for  
5 the applicable rail authority and shall, immediately thereafter, send notice to the  
6 applicant that a copy of the application was sent to the designated agent. The  
7 department may reject an application within 15 days after it is submitted if the  
8 application is incomplete or is not sufficiently detailed to determine whether to  
9 approve or deny the application.

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

12 350.138 (4) (a) (intro.) The Except as provided under par. (e), the department  
13 shall approve or deny an application submitted under sub. (2) within 60 days after  
14 receiving a complete and sufficiently detailed application. The department may  
15 deny an application only if the department determines that the proposed snowmobile  
16 rail crossing does not comply with the rules promulgated under s. 350.137. all of the  
17 following conditions have been met:

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

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

19 350.138 (4) (a) 1. Within 30 days after the date that the department sent a copy  
20 of the application to the applicable rail authority, the applicant contacted the  
21 applicable rail authority *in writing* to discuss the advisability and feasibility of the proposed  
22 rail crossing.

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

*insert 4-22*  
within 90 days after <sup>sending</sup> a copy of the application to the rail authority's designated agent under sub.(3)



1

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

4

<sup>4.</sup>  
~~3~~ The application complies with the rules promulgated under s. 350.137.

5

**SECTION 12.** 350.138 (4) (b) of the statutes is created to read: <sup>all of the following:</sup>  
~~4 1.~~

6

350.138 (4) (b) The department shall hold a hearing on the application if the conditions under par. (a) 1. and <sup>7</sup> ~~3~~ <sup>4.</sup> are met, if the rail authority files with the department an objection to the application within 60 days after receiving notice under sub. (3) and 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.

12

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

13

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 order is a final order subject to judicial review under ch. 227.

17

**SECTION 14.** 350.138 (4) <sup>(d)</sup> ~~(c)~~ of the statutes is created to read: <sup>In making its finding,</sup>

18

350.138 (4) <sup>(d)</sup> ~~(c)~~ The department shall issue a permit to the applicant after a hearing under par. (b), and after giving substantial weight to the testimony or report given under s. 195.03 (30), if the department finds that the proposed snowmobile crossing is advisable and feasible. <sup>but not be limited to,</sup> The department shall consider all of the following factors ~~in determining whether the proposed snowmobile crossing is advisable and feasible.~~

24

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

25

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

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

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

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

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

9           350.138 (5) (a) The department may charge an initial application fee not to  
10 exceed \$150 for the costs of reviewing a permit application under sub. (4). ~~Neither~~  
11 ~~a rail authority nor the department may charge any other fee or amount for the~~  
12 ~~construction or use of a snowmobile rail crossing or for the use of the right-of-way~~  
13 ~~for the crossing. If the department charges the fee, the applicant must include the~~  
14 ~~fee with the permit application.~~

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

16           350.138 (5) (b) Except as provided under par. (c), if the department issues a  
17 permit to an applicant under this section, the applicant shall pay the rail authority  
18 \$1,500 within 30 days after the date on which the permit is issued, to compensate the  
19 rail authority for the the cost of constructing the snowmobile rail crossing and to pay  
20 for the use of the snowmobile rail crossing by snowmobile operators.

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

22           350.138 (5) (c) Biennially, beginning January 1, 2002, the department shall  
23 adjust the fee under par. (b) by a percentage that is equal to the percentage change  
24 in the U.S. consumer price index for all urban consumers, U.S. city average for the  
25 24-month period ending on December 31 of the previous calendar year.

Insert  
6-6

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

2 350.138 (6) LIABILITY INSURANCE. The department shall require a snowmobile  
 3 organization to maintain in effect liability insurance to indemnify the applicable rail  
 4 authority for damages resulting from the design, construction ~~or~~ maintenance,  
 5 existence or use of a snowmobile rail crossing for which a permit is approved issued  
 6 under this section, except that the department shall not require the snowmobile  
 7 organization to maintain in effect liability insurance to indemnify the applicable rail  
 8 authority for injuries sustained by a person engaged in a recreational activity, if the  
 9 ~~snowmobile organization~~ <sup>rail authority</sup> would be immune from liability for those injuries under s.  
 10 895.52. Regardless of the number of snowmobile rail crossings that the snowmobile  
 11 organization maintains under this section and s. 350.139, the amount of the liability  
 12 insurance that is required to be maintained under this subsection shall be at least  
 13 \$1,000,000 ~~\$2,000,000~~ for each snowmobile organization. Beginning on January 1,  
 14 1997, this minimum amount shall increase to \$2,000,000. Any liability insurance  
 15 that is required under this subsection for the purpose of indemnifying a rail  
 16 authority that is a rail transit body shall also indemnify the owners and operators  
 17 of any railroad using the tracks of the rail transit body. Annually, beginning on the  
 18 first day of the 3rd month beginning after the effective date of this subsection ....  
 19 [revisor inserts date], each snowmobile organization that is required to maintain  
 20 liability insurance under this subsection shall furnish proof of that insurance to the  
 21 applicable rail authority and to the department.

\*\*\*\*NOTE: 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.

22

SECTION 19. 350.138 (7) of the statutes is amended to read:

~~snowmobile organization shall designate the~~  
 The applicable rail authority shall be added as a named  
 insured on the policy.

1 ~~350.138 (7) RIGHTS-OF-WAY. For each application approved under sub. (4), the~~  
 2 ~~applicable rail authority shall give the snowmobile organization access to any~~  
 3 ~~right-of-way that the rail authority may have to permit the snowmobile~~  
 4 ~~organization to construct and maintain the snowmobile rail crossing.~~

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

6 350.138 (8) (title) ~~TERMS~~ REVOCATION OF PERMITS.

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

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

10 SECTION 22. 350.138 (8) (b) of the statutes is renumbered 350.138 (8) and  
11 amended to read:

12 350.138 (8) The department may revoke ~~or refuse to renew~~ a permit that it  
 13 ~~previously approved only~~ issued if the department determines that the snowmobile  
 14 rail crossing is not constructed or maintained in compliance with the rules  
 15 promulgated under s. 350.137, ~~the~~. The department must revoke a permit that it  
 16 issued if the snowmobile organization does not maintain any liability insurance that  
 17 is required under sub. (6) or the snowmobile rail crossing is not maintained for use  
 18 by snowmobiles for at least 5 winters in any 10-year period. The 10-year period for  
 19 purposes of this ~~paragraph subsection~~ shall begin on the first December 15 following  
 20 the date of the issuance of the permit.

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

22 350.138 (9) INSPECTION AUTHORIZED. The department or the office of the  
 23 commissioner of railroads may inspect the site of a proposed or ~~existing~~ snowmobile  
 24 rail crossing to determine whether there are grounds to refuse to issue a permit  
 25 under sub. (4) or to revoke ~~or refuse to renew~~ a permit under sub. (8) (b).

or the site of a snowmobile rail crossing for which  
a permit has been issued

*\*\*\*NOTE: This amended language could lead to the result that DNR may not refuse to renew a permit. Is this consistent with your intent?*

*Insert  
9-18*

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**SECTION 24.** 350.139 (3) of the statutes is amended to read:

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

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

350.139 (4) (title) ~~REQUIREMENTS~~ <sup>(c)</sup> *Use and* MAINTENANCE REQUIREMENTS.

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

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

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

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

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

350.139 (4) (b) Maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction or maintenance, existence or use of the established snowmobile rail crossing, except that the department shall not require the snowmobile organization to maintain in effect liability insurance to indemnify the applicable rail authority for injuries sustained by a person engaged in a recreation activity, if the snowmobile *for which it is responsible under*

1 ~~organization~~ <sup>rail authority</sup> would be immune from liability for those injuries under s. 895.52.  
 2 Regardless of the number of established snowmobile rail crossings and snowmobile  
 3 rail crossings under s. 350.138 that each snowmobile organization maintains, the  
 4 amount of the liability insurance that is required to be maintained under this  
 5 paragraph shall be at least ~~\$1,000,000~~ \$2,000,000 for each snowmobile organization.

6 ~~Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000.~~

7 Any liability insurance that is required under this paragraph for the purpose of  
 8 indemnifying a rail authority that is a rail transit body shall also indemnify the  
 9 owners and operators of any railroad using the tracks of the rail transit body.  
 10 Annually, beginning on the first day of the 3rd month beginning after the effective  
 11 date of this paragraph ... [revisor inserts date], each snowmobile organization that  
 12 is required to maintain liability insurance under this paragraph shall furnish proof  
 13 of that insurance to the applicable rail authority and to the department.

\*\*\*NOTE: Please see the NOTE following amended s. 350.138 (6) in this bill.

14 **SECTION 29.** 350.139 (4m) of the statutes is created to read:

15 350.139 (4m) USER REQUIREMENTS. The department shall require a snowmobile  
 16 organization that uses any part of an established snowmobile rail crossing to  
 17 maintain in effect liability insurance as provided under sub. (4) (b).

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

19 350.139 (5) INSPECTION AUTHORIZED. The department or the office of the  
 20 commissioner of railroads may inspect an established snowmobile rail crossing to  
 21 determine whether the snowmobile organization maintaining the crossing is in  
 22 compliance with the requirements imposed under sub. (4).

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

The snowmobile organization shall designate the  
applicable rail authority as a named insured on the  
policy.

1           **350.1395 (title) Snowmobile rail crossings; closing and removal; review**  
2 **of rail authorities; insurance rules.**

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

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

5           350.1395 (2) (a) ~~Except as provided in par. (b), no~~ A rail authority may close  
6 or remove a snowmobile rail crossing subject to a permit under s. 350.138 or an  
7 established snowmobile rail crossing if it enters into a written agreement with the  
8 snowmobile organization under which the snowmobile organization agrees to allow  
9 the rail authority to close or remove the snowmobile rail crossing. Each rail authority  
10 that enters into a written agreement with a snowmobile organization to close or  
11 remove a snowmobile rail crossing shall notify the department of the agreement and  
12 that the snowmobile rail crossing has been closed or removed.

\*\*\*\*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?

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

15           350.1395 (2) (b) 1. A rail authority may petition the department to ~~review any~~  
16 ~~failure of a snowmobile organization to comply with any requirements imposed~~  
17 ~~under s. 350.138 or 350.139 (4), and to issue an order authorizing~~ authorize the rail  
18 authority to close or remove ~~an established~~ a snowmobile rail crossing. ~~The~~  
19 ~~department shall decide the matter after notice and hearing. The order issued by the~~  
20 ~~department is a final order of the department subject to judicial review under ch. 227.~~  
21 The rail authority may file a petition under this subdivision without requesting or  
22 obtaining a written agreement from the snowmobile organization to close or remove  
23 the snowmobile rail crossing.

that holds a permit under s. 350.138<sup>1</sup> or that maintains  
an established snowmobile rail crossing under s. 350.139<sup>1</sup>

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

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

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

8           350.1395 (2) (b) 3. The department shall grant a rail authority's petition under  
9           subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under subd.  
10          2., and after giving substantial weight to the office of the commissioner of railroads'  
11          testimony or report given under s. 195.03 (30) (b), the department finds that any of  
12          the following apply:

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

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

16           c. Another snowmobile rail crossing is located near the snowmobile rail  
17          crossing that is the subject of the petition and the other snowmobile rail crossing  
18          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?

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

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

22          350.1395 (3) REVIEW OF ACTIONS OF RAIL AUTHORITY. A snowmobile organization  
23          may request the department to review any failure of the rail authority, and the rail



1 authority may request the department to review any failure of a snowmobile  
 2 organization, to comply with s. 350.138 ~~or~~, 350.139 ~~or~~, this section or rules  
 3 promulgated under these sections. <sup>or s. 350.137 ✓</sup> The department shall decide the matter after  
 4 notice and a contested case hearing. If the department finds that the rail authority  
 5 or snowmobile organization failed to comply with s. 350.138, 350.139, this section or  
 6 rules promulgated under these sections, <sup>or s. 350.137 ✓</sup> the department shall issue an order  
 7 directing the rail authority or snowmobile organization to take appropriate action  
 8 in order to comply with this that section. The order issued by the department is a  
 9 final order of the department subject to judicial review under ch. 227.

\*\*\*\*NOTE: Your suggested 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.

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

11 350.1395 (4) (b) ~~No rule may be promulgated~~ The department may not  
 12 promulgate a rule under this subsection without approval of the rule by the public  
 13 service commission first consulting with ~~rail authorities, snowmobile organizations~~  
 14 and the office of the commissioner of railroads.

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

(END)

Insert  
13-14  
15

each rail authority in this state an  
established snowmobile association that  
represents snowmobile clubs, as defined in  
s. 350.138(1)(e), in this state

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4175/P2ins  
RNK.....

Insert 4-22

9

~~SECTION 4. 350.138 (4) (a) 2. of the statutes is created to read:~~

350.138 (4) (a) 2. The applicant furnished the department with a copy of the writing by which the applicant contacted the applicable rail authority under subd. 1.

Insert 9-1

SECTION 7. 350.139 (1) (a) of the statutes is amended to read:

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

History: 1993 a. 120.

Insert 13-14

SECTION 8. **Effective date.**

(1) The treatment of section 350.138 (2), (2m) (3), (4) (b), (c), (d) and (e), (6), (8) (title), (a) and (b) and (9) of the statutes, the renumbering and amendment of section 350.138 (4) and (5) of the statutes and the creation of <sup>section</sup> 350.138 (4) (a) 1., 2., 3. and 4. and (5) (b) and (c) of the statutes take effect on the first day of the 4th month beginning after publication.

Insert 6-6

SECTION #. CR; 350.138(4)(e) ↓

350.138(4)(e) <sup>(B)</sup> If the department

issues a permit to an applicant under

this section, the rail authority shall

construct that portion of the rail

crossing that extends ~~4~~ feet on either

side of the rail.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4175/P2dn

RNK.../:...  
W LJ

In accordance with your instructions, this redraft incorporates changes requested by James Sticha. Please note the following:

1. In the proposed amendment to s. 350.139 (4) (a), I made the changes requested so that this provision now provides that a snowmobile organization must maintain that part of an established snowmobile rail crossing for which it is responsible under the rules under s. 350.137. Section 350.137 requires the department to promulgate certain rules. It does not, however, provide that the rules specify which snowmobile organization is responsible for a given crossing. I question whether the intent is instead to require that the snowmobile organization maintain the crossing in accordance with the rules. Please let me know if this provision, as drafted, is consistent with your intent.

2. The instructions for the redraft included a request to provide that under proposed s. 350.138 (2m), with regard to the requirement that a rail authority provide the department with the name of a designated agent, the rail authority has 90 days after this proposal's effective date to furnish that information. Given that much of the procedure under s. 350.138 requires that a designated agent be named, I have added a delayed effective date to this draft for all of the provisions of s. 350.138 treated in this draft. Is this O.K.?

3. In the interest of providing you with this redraft expeditiously, I have again prepared it in preliminary form. When you are satisfied with the draft, please let me know and I will prepare the draft in final form.

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

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4175/P2dn  
RNK:wlj:jf

February 28, 2000

In accordance with your instructions, this redraft incorporates changes requested by James Sticha. Please note the following:

1. In the proposed amendment to s. 350.139 (4) (a), I made the changes requested so that this provision now provides that a snowmobile organization must maintain that part of an established snowmobile rail crossing for which it is responsible under the rules under s. 350.137. Section 350.137 requires the department to promulgate certain rules. It does not, however, provide that the rules specify which snowmobile organization is responsible for a given crossing. I question whether the intent is instead to require that the snowmobile organization maintain the crossing in accordance with the rules. Please let me know if this provision, as drafted, is consistent with your intent.

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

Redraft instructions per Jim Stecha (redraft P/2)

take of delayed eff. date  
give rail authorities 30 days to designate agent  
make clear in SECTIONS 4 & 38, rail authorities  
referred to are those who have given  
DNR info. re: their designated agents  
SECTION 28: snowmobile orgs. must maintain  
that part of the crossing that is outside of  
4 feet on either side of the rail

Per Doug Burnett -

OK to make these changes



[soon]  
State of Wisconsin  
1999 - 2000 LEGISLATURE

RMR  
/1  
LRB-4175/15  
RNK:wlj:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1999 BILL

Regen

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**

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

Insert  
Analysis ↓

**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) ~~(a)~~ <sup>(a)</sup> 1., 2., ~~and 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. that has furnished the department with the information required under s. 350.138(2m) ✓

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

15 350.137 (1) The department, after having consulted with the snowmobile

16 ~~recreational council~~ each rail authority, as defined in s. 350.138 (1) (b), in this state,

17 an established snowmobile association that represents snowmobile clubs, as defined

18 in s. 350.138 (1) (e), in this state and the office of the commissioner of railroads, shall

19 promulgate rules to establish uniform maintenance standards and uniform design

20 and construction standards for snowmobile rail crossings under ss. 350.138 and

21 350.139.

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

23 350.137 (2) (a) Preclude the use of a proposed site for a snowmobile rail crossing

24 because the site would be unsafe due to poor visibility of the proposed snowmobile



1 rail crossing from the cab of a railroad engine an approaching train from the position  
2 of a snowmobile operator who is stopped on the approach to the proposed crossing.

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

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

5 350.138 (2) PERMIT REQUIRED. No person may construct a snowmobile rail  
6 crossing that is not located on a railroad crossing of a public highway or street unless  
7 the person is a snowmobile organization and has a permit ~~approved~~ issued under this  
8 section. No person may maintain a snowmobile rail crossing that is not located on  
9 a railroad crossing of a public highway or street unless the person is a snowmobile  
10 organization and either the person has a permit ~~approved~~ issued under this section  
11 or the snowmobile rail crossing is an established snowmobile rail crossing. In order  
12 to obtain a permit required under this section, a snowmobile organization shall apply  
13 to the department. A separate permit is required for each snowmobile rail crossing  
14 subject to this section.

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

16 (16) 350.138 (2m) DESIGNATION OF AGENTS. Each rail authority <sup>with rail lines</sup> in this state shall  
17 furnish the department with the name and address of an agent who is authorized on  
18 behalf of the rail authority to receive copies of snowmobile crossing permit  
19 applications filed with the department. *Insert 3-19 ✓*

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

21 350.138 (3) CONTENTS OF PROCEDURES FOR PERMIT APPLICATION. An application  
22 submitted under sub. (2) shall include adequate descriptions and drawings showing  
23 the proposed location of the snowmobile rail crossing, the design of the snowmobile  
24 rail crossing and the location of snowmobile trails that connect with the snowmobile  
25 rail crossing. The department shall, upon receipt of an application submitted under

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

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

10 350.138 (4) (a) (intro.) The Except as provided under par. (e), the department  
11 shall approve or deny an application submitted under sub. (2) within 60 days after  
12 receiving a complete and sufficiently detailed application. The department may  
13 deny an application only within 90 days after sending a copy of the application to the  
14 rail authority's designated agent under sub. (3) if the department determines that  
15 the proposed snowmobile rail crossing does not comply with the rules promulgated  
16 under s. 350.137. all of the following conditions have been met:

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

18 350.138 (4) (a) 1. Within 30 days after the date that the department sent a copy  
19 of the application to the applicable rail authority, the applicant contacted the  
20 applicable rail authority in writing to discuss the advisability and feasibility of the  
21 proposed rail crossing.

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

24 3. The rail authority did not file an objection with the department to the  
25 application within 60 days after receiving notice under sub. (3) or did not object,

1 within that period, to a modification of the application as agreed to by the rail  
2 authority and the applicant.

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

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

5 350.138 (4) (b) The department shall hold a hearing on the application if the  
6 conditions under par. (a) 1. and 4. are met, if the rail authority files with the  
7 department an objection to the application within 60 days after receiving notice  
8 under sub. (3) and the objection contains all of the following:

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

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

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

14 350.138 (4) (c) The department shall give notice of any hearing scheduled  
15 under par. (b) to the applicant, the applicable rail authority and to the office of the  
16 commissioner of railroads. The hearing shall be a contested case hearing under ch.  
17 227. The department's order is a final order subject to judicial review under ch. 227.

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

19 350.138 (4) (d) The department shall issue a permit to the applicant after a  
20 hearing under par. (b), and after giving substantial weight to the testimony or report  
21 given under s. 195.03 (30), if the department finds that the proposed snowmobile  
22 crossing is advisable and feasible. In making its finding, the department shall  
23 consider, but not be limited to, all of the following factors:

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

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

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

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

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

8           350.138 (4) (e) If the department issues a permit to an applicant under this  
9 section, the rail authority shall construct that portion of the <sup>snowmobile</sup> rail crossing that  
10 <sup>is on the track and that portion that</sup> extends 4 feet ~~on either side of the rail.~~  
<sub>outward</sub> <sup>from each outer</sup>

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

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

19           **SECTION 17.** 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 the permit is issued, to compensate the  
23 rail authority for the the cost of constructing the snowmobile rail crossing and to pay  
24 for the use of the snowmobile rail crossing by snowmobile operators.

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

1           350.138 (5) (c) Biennially, beginning January 1, 2002, the department shall  
2 adjust the fee under par. (b) by a percentage that is equal to the percentage change  
3 in the U.S. consumer price index for all urban consumers, U.S. city average for the  
4 24-month period ending on December 31 of the previous calendar year.

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

6           350.138 (6) LIABILITY INSURANCE. The department shall require a snowmobile  
7 organization to maintain in effect liability insurance to indemnify the applicable rail  
8 authority for damages resulting from the design, construction ~~or~~ maintenance,  
9 existence or use of a snowmobile rail crossing for which a permit is approved issued  
10 under this section, except that the department shall not require the snowmobile  
11 organization to maintain in effect liability insurance to indemnify the applicable rail  
12 authority for injuries sustained by a person engaged in a recreational activity, if the  
13 rail authority would be immune from liability for those injuries under s. 895.52.  
14 Regardless of the number of snowmobile rail crossings that the snowmobile  
15 organization maintains under this section and s. 350.139, the amount of the liability  
16 insurance that is required to be maintained under this subsection shall be at least  
17 ~~\$1,000,000~~ \$2,000,000 for each snowmobile organization. ~~Beginning on January 1,~~  
18 ~~1997, this minimum amount shall increase to \$2,000,000.~~ The snowmobile  
19 organization shall designate the applicable rail authority as a named insured on the  
20 policy. Any liability insurance that is required under this subsection for the purpose  
21 of indemnifying a rail authority that is a rail transit body shall also indemnify the  
22 owners and operators of any railroad using the tracks of the rail transit body.  
23 Annually, beginning on the first day of the 3rd month beginning after the effective  
24 date of this subsection .... [revisor inserts date], each snowmobile organization that

1 is required to maintain liability insurance under this subsection shall furnish proof  
2 of that insurance to the applicable rail authority and to the department.

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

4 350.138 (8) (title) ~~TERMS~~ REVOCAION OF PERMITS.

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

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

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

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

18 350.138 (9) INSPECTION AUTHORIZED. The department or the office of the  
19 commissioner of railroads may inspect the site of a proposed or snowmobile rail  
20 crossing or the site of a snowmobile rail crossing for which a permit has been issued  
21 to determine whether there are grounds to refuse to issue a permit under sub. (4) or  
22 to revoke a permit under sub. (8) (b).

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

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

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

5 350.139 (3) CHARGES PROHIBITED. Neither the department nor a rail authority  
6 may charge a fee or any other amount for the use of an established snowmobile rail  
7 crossing or for the use of a right-of-way for the established snowmobile rail crossing,  
8 unless otherwise agreed upon by the rail authority and a snowmobile organization.

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

10 350.139 (4) (title) ~~REQUIREMENTS~~ USE AND MAINTENANCE REQUIREMENTS.

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

12 350.139 (4) (intro.) The department shall require a snowmobile organization  
13 that uses or maintains any part of an established snowmobile rail crossing to do all  
14 of the following:

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

16 350.139 (4) (a) Maintain that ~~part~~ <sup>portion</sup> of the established snowmobile rail crossing  
17 ~~in conformance with for which it is responsible under the rules promulgated under~~  
18 ~~s. 350.137~~

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

20 350.139 (4) (b) Maintain in effect liability insurance to indemnify the  
21 applicable rail authority for damages resulting from the design, construction ~~or~~,  
22 maintenance, existence or use of the established snowmobile rail crossing, except  
23 that the department shall not require the snowmobile organization to maintain in  
24 effect liability insurance to indemnify the applicable rail authority for injuries  
25 sustained by a person engaged in a recreation activity, if the rail authority would be

that is outside of the portion of the <sup>snowmobile</sup> rail crossing  
that extends <sup>outward</sup> 4 feet ~~on either side of the rail~~  
From each outer

1 immune from liability for those injuries under s. 895.52. Regardless of the number  
2 of established snowmobile rail crossings and snowmobile rail crossings under s.  
3 350.138 that each snowmobile organization maintains, the amount of the liability  
4 insurance that is required to be maintained under this paragraph shall be at least  
5 ~~\$1,000,000~~ \$2,000,000 for each snowmobile organization. ~~Beginning on January 1,~~  
6 ~~1997, this minimum amount shall increase to \$2,000,000.~~ The snowmobile  
7 organization shall designate the applicable rail authority as a named insured on the  
8 policy. Any liability insurance that is required under this paragraph for the purpose  
9 of indemnifying a rail authority that is a rail transit body shall also indemnify the  
10 owners and operators of any railroad using the tracks of the rail transit body.  
11 Annually, beginning on the first day of the 3rd month beginning after the effective  
12 date of this paragraph .... [revisor inserts date], each snowmobile organization that  
13 is required to maintain liability insurance under this paragraph shall furnish proof  
14 of that insurance to the applicable rail authority and to the department.

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

16 350.139 (5) INSPECTION AUTHORIZED. The department or the office of the  
17 commissioner of railroads may inspect an established snowmobile rail crossing to  
18 determine whether the snowmobile organization maintaining the crossing is in  
19 compliance with the requirements imposed under sub. (4).

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

21 **350.1395 (title) Snowmobile rail crossings; closing and removal; review**  
22 **of rail authorities; insurance rules.**

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

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



1           350.1395 (2) (a) ~~Except as provided in par. (b), no~~ A rail authority may close  
2 or remove a snowmobile rail crossing subject to a permit under s. 350.138 or an  
3 established snowmobile rail crossing if it enters into a written agreement with the  
4 snowmobile organization under which the snowmobile organization agrees to allow  
5 the rail authority to close or remove the snowmobile rail crossing. Each rail authority  
6 that enters into a written agreement with a snowmobile organization that holds a  
7 permit under s. 350.138 or that maintains an established snowmobile rail crossing  
8 under s. 350.139 to close or remove a snowmobile rail crossing shall notify the  
9 department of the agreement and that the snowmobile rail crossing has been closed  
10 or removed.

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

13           350.1395 (2) (b) 1. A rail authority may petition the department to ~~review any~~  
14 ~~failure of a snowmobile organization to comply with any requirements imposed~~  
15 ~~under s. 350.138 or 350.139 (4), and to issue an order authorizing~~ authorize the rail  
16 authority to close or remove ~~an established~~ a snowmobile rail crossing. The  
17 department shall decide the matter after notice and hearing. ~~The order issued by the~~  
18 ~~department is a final order of the department subject to judicial review under ch. 227.~~  
19 The rail authority may file a petition under this subdivision without requesting or  
20 obtaining a written agreement from the snowmobile organization to close or remove  
21 the snowmobile rail crossing.

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

23           350.1395 (2) (b) 2. The department shall hold a hearing on a petition filed under  
24 subd. 1. after giving notice of the hearing to the rail authority, snowmobile  
25 organization and the office of the commissioner of railroads. The hearing shall be a

1 contested case hearing under ch. 227. The department's order shall be a final order  
2 subject to judicial review under ch. 227.

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

4 350.1395 (2) (b) 3. The department shall grant a rail authority's petition under  
5 subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under subd.  
6 2., and after giving substantial weight to the office of the commissioner of railroads'  
7 testimony or report given under s. 195.03 (30) (b), the department finds that any of  
8 the following apply:

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

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

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

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

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

18 350.1395 (3) REVIEW OF ACTIONS OF RAIL AUTHORITY. A snowmobile organization  
19 may request the department to review any failure of the rail authority, and the rail  
20 authority may request the department to review any failure of a snowmobile  
21 organization, to comply with s. 350.138 ~~or~~, 350.139 ~~or~~, this section or rules  
22 promulgated under these sections or s. 350.137. The department shall decide the  
23 matter after notice and a contested case hearing. If the department finds that the  
24 rail authority or snowmobile organization failed to comply with s. 350.138, 350.139,  
25 this section or rules promulgated under these sections or s. 350.137, the department

1 shall issue an order directing the rail authority or snowmobile organization to take  
2 appropriate action in order to comply with ~~this~~ that section. The order issued by the  
3 department is a final order of the department subject to judicial review under ch. 227.

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

5 350.1395 (4) (b) ~~No rule may be promulgated~~ The department may not  
6 promulgate a rule under this subsection without approval of the rule by the public  
7 ~~service commission~~ first consulting with each rail authority in this state, an  
8 established snowmobile association that represents snowmobile clubs, as defined in  
9 s. 350.138 (1) (e), in this state and the office of the commissioner of railroads.

10 **SECTION 39. Effective date.**

11 (1) ~~The treatment of section 350.138 (2), (2m) (3), (4) (b), (c), (d) and (e), (6), (8)~~  
12 ~~(title), (a) and (b) and (9) of the statutes, the renumbering and amendment of section~~  
13 ~~350.138 (4) and (5) of the statutes and the creation of section 350.138 (4) (a) 1., 2., 3.~~  
14 ~~and 4. and (5) (b) and (c) of the statutes take effect on the first day of the 4th month~~  
15 ~~beginning after publication.~~

16 (END)

that has furnished the department with the  
information required under s. 350.138(2m), ✓

## Insert Analysis

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 resources (DNR). Current law also regulates established crossings, which are defined as crossings that have been used by snowmobiles for at least <sup>five</sup> ~~ten~~ 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 <sup>g</sup>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 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.

[Insert 3-19]

No  
4

A rail authority that has rail lines in this state on the effective date of this <sup>subsection</sup> ~~part~~ . . . .

[revisor inserts date], shall furnish this information to the department within

30 days of the effective date of this <sup>subsection</sup>

~~part~~ / . . . . [revisor inserts date] ©

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 03/02/2000

To: Senator Chvala

Relating to LRB drafting number: LRB-4175

Topic

Snowmobile rail crossings

Subject(s)

Nat. Res. - boats snomos ATVs

1. JACKET the draft for introduction Chuck Chvala  
in the Senate  or the Assembly \_\_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached \_\_\_\_\_  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain FISCAL ESTIMATE NOW, prior to introduction Chuck Chvala  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robin N. Kite, Legislative Attorney  
Telephone: (608) 266-7291