

2001 ASSEMBLY BILL 143

February 20, 2001 – Introduced by Representatives WADE, OLSEN, NASS, LIPPERT, RYBA, KAUFERT, PETROWSKI, KESTELL, GRONEMUS, VRAKAS, GUNDERSON, JOHNSRUD, KREUSER, KREIBICH, TOWNSEND, ALBERS, SYKORA and PETTIS, cosponsored by Senators BRESKE, COWLES, DECKER, BAUMGART and SCHULTZ. Referred to Committee on Tourism and Recreation.

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

Analysis by the Legislative Reference Bureau

Current law regulates snowmobile rail crossings (crossings) that are not located on highways or streets. Under that law, only a snowmobile organization may construct a crossing. Current law defines a “snowmobile organization” as a snowmobile club, a snowmobile alliance, or a county. In order to construct a crossing, the snowmobile organization must obtain a permit from the department of natural resources (DNR). Current law also regulates established crossings which are defined as crossings that have been used by snowmobiles for at least five winters of

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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 each rail authority that has rail lines in this state to designate an agent who is authorized on behalf of the rail authority to receive copies of crossing permit applications filed with DNR and requires DNR to 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, if certain conditions are met. The conditions require, among other things, that the permit applicant contact the rail authority to discuss the advisability and feasibility of the proposed crossing, that the application comply with certain rules promulgated by DNR and that the rail authority not object to the application. The bill establishes a hearing procedure that applies if the rail authority does object to the application. The bill requires that the office of the commissioner of railroads give testimony at such a hearing addressing certain issues, including whether the proposed rail crossing could pose a substantial danger to public safety.

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

5. Under current law, a snowmobile organization must maintain liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction, or maintenance of a crossing for which there is a permit. Under the bill, the insurance must also indemnify the rail authority for damages resulting from the existence or use of the crossing. The bill also provides that the snowmobile organization need not maintain the insurance to indemnify the rail authority for injuries sustained by a person engaged in a recreational activity if the rail authority would be immune from liability for those injuries under current law.

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

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

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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 the authority enters into an agreement with the snowmobile organization to close or remove the crossing. The bill also authorizes a rail authority to petition DNR to close or remove a crossing without first obtaining an agreement from the snowmobile organization.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

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

10 **195.307 Snowmobile rail crossings.** Sections 195.28, 195.285, 195.286, and
11 195.29 do not apply to snowmobile rail crossings for which a permit is issued under
12 s. 350.138.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 350.138 (4) (a) 1. Within 30 days after the date on which the department sent
8 a copy of the application to the applicable rail authority, the applicant provided to the
9 applicable rail authority a written offer to discuss the advisability and feasibility of
10 the proposed rail crossing.

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

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

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

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

19 350.138 (4) (b) The department shall hold a hearing on the application if the
20 conditions under par. (a) 1., 2., and 4. are met, if the rail authority files with the
21 department an objection to the application within 60 days after receiving notice
22 under sub. (3), and if the objection contains all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

ASSEMBLY BILL 143**SECTION 15**

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

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

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

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

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

16 350.138 **(5)** (c) Biennially, beginning on January 1, 2004, the department shall
17 adjust the fee under par. (b) by a percentage that is equal to the percentage change
18 in the U.S. consumer price index for all urban consumers, U.S. city average, for the
19 24-month period ending on December 31 of the previous calendar year.

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

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

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

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

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

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

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

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

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

20 350.138 (8) ~~TERMS~~ REVOCAION OF PERMITS. The department may revoke or
21 refuse to renew a permit that it ~~previously approved only~~ issued if the department
22 determines that the snowmobile rail crossing is not constructed or maintained in
23 compliance with the rules promulgated under s. 350.137, ~~the.~~ The department shall
24 revoke a permit that it issued if the snowmobile organization does not maintain any
25 liability insurance that is required under sub. (6) or the snowmobile rail crossing is

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1 not maintained for use by snowmobiles for at least 5 winters in any 10–year period.
2 The 10–year period for purposes of this ~~paragraph~~ subsection shall begin on the first
3 December 15 following the date of the issuance of the permit.

4 **SECTION 21.** 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 snowmobile rail crossing
7 or the site of a snowmobile rail crossing for which a permit has been issued to
8 determine whether there are grounds to refuse to issue a permit under sub. (4) or to
9 revoke ~~or refuse to renew~~ a permit under sub. (8) (b).

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

11 350.139 (1) (a) “Established snowmobile rail crossing” means a snowmobile rail
12 crossing that has been used by snowmobiles, or maintained by a snowmobile
13 organization for use by snowmobiles, for at least 5 winters of the last 10 years.

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

15 350.139 (3) CHARGES PROHIBITED. Neither the department nor a rail authority
16 may charge a fee or any other amount for the use of an established snowmobile rail
17 crossing or for the use of a right–of–way for the established snowmobile rail crossing,
18 unless otherwise agreed upon by the rail authority and a snowmobile organization.

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

20 350.139 (4) ~~REQUIREMENTS~~ USE AND MAINTENANCE REQUIREMENTS. (intro.) The
21 department shall require a snowmobile organization that uses or maintains any part
22 of an established snowmobile rail crossing to do all of the following:

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

24 350.139 (4) (a) Maintain that portion of the established snowmobile rail
25 crossing ~~in conformance with the rules promulgated under s. 350.137~~ that is outside

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1 of the portion of the snowmobile rail crossing that extends outward 4 feet from each
2 outer rail.

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

4 350.139 (4) (b) Maintain in effect liability insurance to indemnify the
5 applicable rail authority for damages resulting from the design, construction or,
6 maintenance, existence, or use of the established snowmobile rail crossing, except
7 that the department shall not require the snowmobile organization to maintain in
8 effect liability insurance to indemnify the applicable rail authority for injuries
9 sustained by a person engaged in a recreational activity, if the rail authority would
10 be immune from liability for those injuries under s. 895.52. Regardless of the number
11 of established snowmobile rail crossings and snowmobile rail crossings under s.
12 350.138 that each snowmobile organization maintains, the amount of the liability
13 insurance that is required to be maintained under this paragraph shall be at least
14 \$1,000,000 \$2,000,000 for each snowmobile organization. ~~Beginning on January 1,~~
15 ~~1997, this minimum amount shall increase to \$2,000,000~~ The snowmobile
16 organization shall designate the applicable rail authority as a named insured on the
17 policy. Any liability insurance that is required under this paragraph for the purpose
18 of 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 on the first day of the 3rd month beginning after the effective
21 date of this paragraph [revisor inserts date], each snowmobile organization that
22 is required to maintain liability insurance under this paragraph shall furnish proof
23 of that insurance to the applicable rail authority and to the department.

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

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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).

5 **SECTION 28.** 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.**

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

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

10 350.1395 (2) (a) ~~Except as provided in par. (b), no~~ A rail authority may close
11 or remove a snowmobile rail crossing subject to a permit under s. 350.138 or an
12 established snowmobile rail crossing if it enters into a written agreement with a
13 snowmobile organization that holds a permit under s. 350.138 or that maintains an
14 established snowmobile rail crossing under s. 350.139 under which the snowmobile
15 organization agrees to allow the rail authority to close or remove the snowmobile rail
16 crossing. Each rail authority that enters into a written agreement with a
17 snowmobile organization under this paragraph to close or remove a snowmobile rail
18 crossing shall notify the department of the agreement and that the snowmobile rail
19 crossing has been closed or removed.

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

22 350.1395 (2) (b) 1. A rail authority may petition the department to ~~review any~~
23 ~~failure of a snowmobile organization to comply with any requirements imposed~~
24 ~~under s. 350.138 or 350.139 (4), and to issue an order authorizing~~ authorize the rail
25 authority to close or remove ~~an established~~ a snowmobile rail crossing. The

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1 ~~department shall decide the matter after notice and hearing. The order issued by the~~
2 ~~department is a final order of the department subject to judicial review under ch. 227~~
3 rail authority may file a petition under this subdivision without requesting or
4 obtaining a written agreement from the snowmobile organization to close or remove
5 the snowmobile rail crossing.

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

7 350.1395 (2) (b) 2. The department shall hold a hearing on a petition filed under
8 subd. 1. after giving notice of the hearing to the rail authority, the snowmobile
9 organization, and the office of the commissioner of railroads. The hearing shall be
10 a contested case hearing under ch. 227. The department's order shall be a final order
11 subject to judicial review under ch. 227.

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

13 350.1395 (2) (b) 3. The department shall grant a rail authority's petition under
14 subd. 2. to close or remove a snowmobile rail crossing if, after a hearing under subd.
15 2., and after giving substantial weight to the office of the commissioner of railroads'
16 testimony or report given under s. 195.03 (30) (b), the department finds that any of
17 the following applies:

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

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

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

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

