

2001 DRAFTING REQUEST

Bill

Received: **09/26/2000**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

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

Drafter: **nelsorp1**

May Contact:

Alt. Drafters:

Subject: **Transportation - railroads
Courts - immunity liability**

Extra Copies: **PJH
TNF**

Pre Topic:

DOA:.....Etzler -

Topic:

Rails-with-trails immunity

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 09/26/2000	gilfokm 09/27/2000					S&L
/P1	fasttn 11/28/2000		rschluet 09/28/2000		lrb_docadmin 09/28/2000		S&L
/1	nelsorp1 11/28/2000	gilfokm 11/29/2000	pgreensl 11/29/2000		lrb_docadmin 11/29/2000		

FE Sent For:

<END>

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1?	nilsepe	1/1-9/27 Kmg	 9.27.00	 km 5.27.00			

FE Sent For:

<END>

-0528

LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL 2001-2003 BIENNIUM

Wisconsin Department of Transportation

DT1586 5/2000

Instructions: Complete this form for any budget/non-budget legislative initiative for which a Division requests the Secretary's Office (SO) approval. Check the budget box only if the proposal has a fiscal impact on department expenditures or revenue. This form must be signed by the Division Administrator(s). Include this form with your budget submittal materials or return two completed copies to the Office of Policy & Budget (OPB), Attention: Jim Hoelzel. One copy will be retained by OPB and the other copy provided to the Office of General Counsel. The form is available in the department forms catalog on dotnet.

Short Title of Topic Joint Use of Trails on Active Rail Road Right of Way			
Type of Proposal <input checked="" type="checkbox"/> Budget <input checked="" type="checkbox"/> Non Budget	OGC OFFICE USE ONLY "T" Number Assigned "B" Number Assigned "NB" Number Assigned		
	T045	B035	NB013
Date Submitted	Division(s) DTID		
OPB Contact Person	Area Code - Telephone Number		
Lead Division Contact Person Ron Adams	Area Code - Telephone Number 267-9284		
OGC Contact Person	Area Code - Telephone Number		
Define Problem Precisely There are certain locations and instances where it is desirable from the standpoint of a local unit of government, or other trail sponsor, to locate a recreation/transportation trail on right-of-way of an active rail line, creating a "rails with trails" trail. Because of concerns over liability created by allowing this type of joint activity on the corridor, railroad corridor owners and operators have generally refused to allow such trails. Many railroads are self-insured or have special railroad liability insurance with a sizable self insured retention. The location of trail on railroad right-of-way could result in higher liability costs, higher insurance costs or the inability to obtain insurance.			
Description of Proposed Change Statutory language change to ss.895.52(1) to limit liability for railroad and government entities that construct trails on active railroad right of way. Under current law, a property owner generally has no duty to keep the property safe for recreational activities, to inspect the property or to warn of unsafe conditions on the property and is immune from liability damages occurring on the property while a person is engaged in a recreational activity on the property (does not apply if the owner charges for the recreational activity). Definition of "recreational activity" doesn't clearly include transportation for purposes other than exercise, relaxation or pleasure. We would like to add "using a rails-with-trails trail" to the list of specified recreational activities. "Rails-with-trails trails" are located within an active rail corridor and with the consent of the railroad is open for specified public uses, including travel.			
Justification for Change There are certain locations and instances where it is desirable from the standpoint of a local government to locate a recreational trail on the right of way of an active trail line. It is anticipated that the public would benefit from this. Trail sponsors are generally the state, local units of government or private clubs. In recent years, there has been increasing interest in using active rail corridors for trails. State railroads and rail property owners would receive immunity from liability for allowing rail property to be used by the general public for transportation purposes. This would expand the current statute which only provides immunity from liability for recreational activities. Although liability has not been the only concern raised by railroads regarding the use of rail right-ow-way for trail purposes, it has been the most frequently cited and most difficult to address. Trail users would benefit by increased mobility, safety and recreational opportunities. Trail users frequently sight the need safe, efficient trail corridors.			
Describe any legislative history and related statutory language The recreational trail immunity statute was legislated in 1984.			

soon

DOA:.....Etzler - Trails on active railroad right-of-way

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

2001-03

DONT GEN. CAT.

- 1 AN ACT relating to: extending recreational immunity from civil liability to
- 2 public trails within active rail corridors.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

RAIL AND AIR TRANSPORTATION

Under current law, a property owner generally has no duty to keep the property safe for recreational activities, to inspect the property or to warn of unsafe conditions on the property and is immune from liability for damages occurring on the property while a person is engaged in a recreational activity on the property. This immunity does not apply to private property if the property owner charges for the recreational use of the property and the total annual value of the charges exceeds \$2,000. Generally, "recreational activity" includes every kind of outdoor activity, sport or game that can be engaged in by an individual, but does not clearly include transportation undertaken for purposes other than exercise, relaxation or pleasure.

This bill adds "using a rails-with-trails trail" to the list of specified recreational activities. The bill defines "rails-with-trails trail" as a trail that is located within an active rail corridor and, with the consent of the railroads, is open for specified public uses, including travel.

e

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.** 895.52 (1) (fc) of the statutes is created to read:

2 895.52 (1) (fc) "Rails-with-trails trail" means an identified strip of land that
3 lies partly or fully within an active rail corridor and that is made available for
4 specified public uses, including travel for any purpose, under a recreational
5 agreement executed by any railroad that operates within the corridor.

 ****NOTE: This definition provides immunity only within the trail right-of-way, not within the entire rail corridor beside the trail. Is this OK? This immunity may be broad enough to preclude liability for injuries to a utility lineman traveling upon the trail for the purposes of accessing a utility facility within the rail corridor. Is this OK?

6 **SECTION 2.** 895.52 (1) (g) of the statutes is amended to read:

7 895.52 (1) (g) "Recreational activity" means any outdoor activity undertaken
8 for the purpose of exercise, relaxation, [✓]or pleasure, including practice or instruction
9 in any such activity, and using a rails-with-trails trail. "Recreational activity"
10 includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature
11 study, bicycling, horseback riding, bird-watching, motorcycling, operating an
12 all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh
13 riding, snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing,
14 cutting or removing wood, climbing observation towers, animal training, harvesting
15 the products of nature, sport shooting, [✓]and any other outdoor sport, game, [✓]or
16 educational activity. "Recreational activity" does not include any organized team
17 sport activity sponsored by the owner of the property on which the activity takes
18 place.

 ****NOTE: I added rails-with-trails to the first sentence here instead of the ^{stet} ~~second~~ [✓] ~~third~~ sentence because adding it only to the second sentence might invite a ²-step inquiry into:

↳ two
R

Prog w/ Folio

1) whether the injured party was using a "rails-with-trails"; and 2) whether that use was, "for the purpose of exercise, relaxation, or pleasure". Obviously, the inquiry into the purpose of the use is contrary to the intent of this request.

1

SECTION 935². Initial applicability; transportation.

2

(1) RAILS-WITH-TRAILS IMMUNITY. The treatment of section 895.52 (1) (g) [✓] of the

3

statutes first applies to use of a rails-with-trails trail on the effective date of this

4

subsection.

5

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0528/PT

RPN+ PEN:kmg:rs

SOON

DOA:.....Etzler - Rails-with-trails ~~recreational~~ recreational immunity

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

D-NOTE

1 AN ACT ^{DON'T GEN. CAT.} relating to: ^{providing} extending recreational immunity from civil liability to
2 public trails within active rail corridors.

or if the injury was caused by a malicious act or omission of the property owner

Analysis by the Legislative Reference Bureau

TRANSPORTATION

RAIL AND AIR TRANSPORTATION

Under current law, a property owner generally has no duty to keep the property safe for recreational activities, to inspect the property, or to warn of unsafe conditions on the property and is immune from liability for damages occurring on the property while a person is engaged in a recreational activity on the property. This immunity does not apply to private property if the property owner charges for the recreational use of the property and the total annual value of the charges exceeds \$2,000. Generally, "recreational activity" includes every kind of outdoor activity, sport, or game that can be engaged in by an individual, but does not clearly include transportation undertaken for purposes other than exercise, relaxation, or pleasure.

This bill adds "using a rails-with-trails trail" to the list of specified recreational activities. The bill defines "rails-with-trails trail" as a trail that is located within an active rail corridor and, with the consent of the railroad, is open for specified public uses, including travel.

Insert
and

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

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3 lies partly or fully within an active rail corridor and that is made available for
4 specified public uses, including travel for any purpose, under a recreational
5 agreement executed ^{with whom} by any railroad that operates within the corridor.

 ****NOTE: This definition provides immunity only within the trail right-of-way, not
 within the entire rail corridor beside the trail. Is this OK? This immunity may be broad
 enough to preclude liability for injuries to a utility lineman traveling upon the trail for
 the purposes of accessing a utility facility within the rail corridor. Is this OK?

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7 895.52 (1) (g) "Recreational activity" means any outdoor activity undertaken
8 for the purpose of exercise, relaxation, or pleasure, including practice or instruction
9 in any such activity, and using a rails-with-trails trail. "Recreational activity"
10 includes hunting, fishing, trapping, camping, picnicking, exploring caves, nature
11 study, bicycling, horseback riding, bird-watching, motorcycling, operating an
12 all-terrain vehicle, ballooning, hang gliding, hiking, tobogganing, sledding, sleigh
13 riding, snowmobiling, skiing, skating, water sports, sight-seeing, rock-climbing,
14 cutting or removing wood, climbing observation towers, animal training, harvesting
15 the products of nature, sport shooting, and any other outdoor sport, game, or
16 educational activity. "Recreational activity" does not include any organized team
17 sport activity sponsored by the owner of the property on which the activity takes
18 place.

 ****NOTE: I added rails-with-trails to the first sentence here instead of the second
 sentence because adding it only to the second sentence might invite a two-step inquiry

into: 1) whether the injured party was using a "rails-with-trails"; and 2) whether that use was, "for the purpose of exercise, relaxation, or pleasure". Obviously, the inquiry into the purpose of the use is contrary to the intent of this request.

insert
3-1

1 **SECTION 9352. Initial applicability; transportation.**

895.518 ✓
~~895.518 (1) (g)~~ ✓

2 (1) ~~RAILS WITH TRAILS IMMUNITY~~. The treatment of section ~~895.518 (1) (g)~~ of the
3 statutes first applies to use of a rails-with-trails trail on the effective date of this
4 subsection.

5 (END)

*LPS: search/change all refs.
to "trial" to "trail"*

1

insert anl:

AM

This bill creates an immunity from civil liability for any property owner upon which a rails-with-trails trail is located and for any railroad that operates within an active rail corridor upon which a rails-with-trails trail is located for the death, injury, or property damage resulting from an individual's use of a rails-with-trails trail. The bill defines a rails-with-trails trail as a strip of land that is located partly or fully within an active rail corridor and is identified in an agreement entered into by a railroad that operates within that rail corridor and a person that is sponsoring and maintaining the strip of land for the use of individuals for purposes specified in the agreement. The immunity does not apply to deaths, injuries or property damage caused by the property owner's or railroad's willful or wanton acts or omissions.

2

3

4

insert 3-1:

5

SECTION 1. 895.518 of the statutes is created to read:

6

895.518 Liability exemption; rails with trails. (1) In this section,

7

"rails-with-trails trail" means a strip of land that is located partly or fully within an active rail corridor and is identified in an agreement entered into by a railroad that operates within that rail corridor and a person that is sponsoring and maintaining the strip of land for the use of individuals for purposes specified in the agreement.

8

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11

(2) The owner of property upon which a rails-with-trails trail is located and any railroad that operates within the active rail corridor upon which a rails-with-trails trail is located is immune from civil liability for ^{the} death of or injury to an individual or damage to an individual's property resulting from the individual's use of a rails-with-trails trail.

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(3) The immunity under sub. (2) does not apply if the death, injury, or damage to property was caused by willful or wanton acts or omissions of the property owner or railroad.

17

18

1

2

A handwritten mark, possibly initials or a signature, consisting of several overlapping lines.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0528/1dn
RPN&PEN:kmg:rs

As originally drafted, this bill would ~~have~~ ^{were} provided an immunity to property owners under the recreational activities statutory section from persons using a rails-with-trails trail, regardless of the use being made of the trail. Thus, if a workman ~~was~~ ^{were} laying a fiber-optic cable under the trail or if a person ~~was~~ ^{were} commuting to work by bicycle on the trail, the property owner would have immunity for injuries caused by the owner's failure to keep the property safe. Providing immunity for such nonrecreational uses does not belong in a statutory section that is attempting to encourage property owners to allow the recreational use of their property by granting immunity for injuries to recreational users. The title, word usage, and plain meaning of the words dictate placing this policy in a different statute.

As has been done for other requests to provide immunity for certain persons or activities, I have created a separate section of the statutes for this specific immunity, rather than adding that immunity ⁱⁿ an inappropriate section of the statutes.

Although the original draft only protected property owners, this version of the draft also provides immunity to the railroads that operate in the rail corridor. Is that consistent with your intent?

Note that I did limit the immunity, using language that is consistent with other nearby statutes, but that is not the same as the limits in section 895.52 (6).

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0528/1dn
RPN&PEN:kmg:pg

November 29, 2000

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0528/1

RPN&PEN:kmg:pg

DOA:.....Etzler - Rails-with-trails immunity

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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