

## 2001 SENATE BILL 58

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.

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*Analysis by the Legislative Reference Bureau*

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

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

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

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

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

9           **195.307 Snowmobile rail crossings.** Sections 195.28, 195.285, 195.286, and  
10 195.29 do not apply to snowmobile rail crossings for which a permit is issued under  
11 s. 350.138.

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

13          350.137 **(1)** The department, after having consulted with ~~the snowmobile~~  
14 ~~recreational council~~ each rail authority, as defined in s. 350.138 (1) (b), in this state,  
15 that has furnished the department with the information required under s. 350.138  
16 (2m), an established snowmobile association that represents snowmobile clubs, as  
17 defined in s. 350.138 (1) (e), in this state, 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.

21          **SECTION 4.** 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~~  
24 ~~rail crossing from the cab of a railroad engine~~ an approaching train from the position  
25 of a snowmobile operator who is stopped on the approach to the proposed crossing.

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1           **SECTION 5.** 350.137 (3) of the statutes is repealed.

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

3           350.138 **(2)** PERMIT REQUIRED. No person may construct a snowmobile rail  
4 crossing that is not located on a railroad crossing of a public highway or street unless  
5 the person is a snowmobile organization and has a permit ~~approved~~ issued under this  
6 section. No person may maintain a snowmobile rail crossing that is not located on  
7 a railroad crossing of a public highway or street unless the person is a snowmobile  
8 organization and either the person has a permit ~~approved~~ issued under this section  
9 or the snowmobile rail crossing is an established snowmobile rail crossing. In order  
10 to obtain a permit required under this section, a snowmobile organization shall apply  
11 to the department. A separate permit is required for each snowmobile rail crossing  
12 subject to this section.

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

14           350.138 **(2m)** DESIGNATION OF AGENTS. Each rail authority with rail lines in this  
15 state shall furnish the department with the name and address of an agent who is  
16 authorized on behalf of the rail authority to receive copies of snowmobile crossing  
17 permit applications filed with the department. A rail authority that has rail lines  
18 in this state on the effective date of this subsection .... [revisor inserts date], shall  
19 furnish this information to the department within 30 days of the effective date of this  
20 subsection .... [revisor inserts date].

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

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

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

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

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

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

19 350.138 (4) (a) 1. Within 30 days after the date on which the department sent  
20 a copy of the application to the applicable rail authority, the applicant provided to the  
21 applicable rail authority a written offer to discuss the advisability and feasibility of  
22 the proposed rail crossing.

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

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

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

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

7           350.138 (4) (b) The department shall hold a hearing on the application if the  
8 conditions under par. (a) 1., 2., and 4. are met, if the rail authority files with the  
9 department an objection to the application within 60 days after receiving notice  
10 under sub. (3), and if the objection contains all of the following:

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

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

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

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

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

22           350.138 (4) (d) The department shall issue a permit to the applicant after a  
23 hearing under par. (b), and after giving substantial weight to the testimony or report  
24 given under s. 195.03 (30), if the department finds that the proposed snowmobile

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1 crossing is advisable and feasible. In making its finding, the department shall  
2 consider, but not be limited to, all of the following factors:

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

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

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

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

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

12 350.138 (4) (e) If the department issues a permit to an applicant under this  
13 section, the rail authority shall construct that portion of the snowmobile rail crossing  
14 that is on the track and that portion that extends outward 4 feet from each outer rail.

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

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

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

24 350.138 (5) (b) Except as provided under par. (c), if the department issues a  
25 permit to an applicant under this section, the applicant shall pay the rail authority

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1 \$1,500 within 30 days after the date on which the permit is issued, to compensate the  
2 rail authority for the cost of constructing the snowmobile rail crossing and to pay for  
3 the use of the snowmobile rail crossing by snowmobile operators.

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

5 350.138 (5) (c) Biennially, beginning on January 1, 2004, the department shall  
6 adjust the fee under par. (b) by a percentage that is equal to the percentage change  
7 in the U.S. consumer price index for all urban consumers, U.S. city average, for the  
8 24-month period ending on December 31 of the previous calendar year.

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

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

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1 indemnify the owners and operators of any railroad using the tracks of the rail  
2 transit body. Annually, beginning on the first day of the 3rd month beginning after  
3 the effective date of this subsection ... [revisor inserts date], each snowmobile  
4 organization that is required to maintain liability insurance under this subsection  
5 shall furnish proof of that insurance to the applicable rail authority and to the  
6 department.

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

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

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

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

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

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



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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 23.** 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 24.** 350.139 (4) (intro.) of the statutes is amended to read:

10           350.139 (4) ~~REQUIREMENTS~~ USE AND MAINTENANCE REQUIREMENTS. (intro.) The  
11 department shall require a snowmobile organization that uses or maintains any part  
12 of an established snowmobile rail crossing to do all of the following:

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

14           350.139 (4) (a) Maintain that portion of the established snowmobile rail  
15 crossing ~~in conformance with the rules promulgated under s. 350.137~~ that is outside  
16 of the portion of the snowmobile rail crossing that extends outward 4 feet from each  
17 outer rail.

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

19           350.139 (4) (b) Maintain in effect liability insurance to indemnify the  
20 applicable rail authority for damages resulting from the design, construction or,  
21 maintenance, existence, or use of the established snowmobile rail crossing, except  
22 that the department shall not require the snowmobile organization to maintain in  
23 effect liability insurance to indemnify the applicable rail authority for injuries  
24 sustained by a person engaged in a recreational activity, if the rail authority would  
25 be immune from liability for those injuries under s. 895.52. Regardless of the number

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

15 **SECTION 27.** 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 28.** 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 29.** 350.1395 (1) (a) of the statutes is repealed.

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

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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 a  
4 snowmobile organization that holds a permit under s. 350.138 or that maintains an  
5 established snowmobile rail crossing under s. 350.139 under which the snowmobile  
6 organization agrees to allow the rail authority to close or remove the snowmobile rail  
7 crossing. Each rail authority that enters into a written agreement with a  
8 snowmobile organization under this paragraph to close or remove a snowmobile rail  
9 crossing shall notify the department of the agreement and that the snowmobile rail  
10 crossing has been closed or removed.

11           **SECTION 31.** 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 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 32.** 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, the snowmobile  
25 organization, and the office of the commissioner of railroads. The hearing shall be

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1 a 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 33.** 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 applies:

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 34.** 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~~ a rail authority, and a 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 or  
25 350.139, this section, or rules promulgated under these sections or s. 350.137, the

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

5 **SECTION 35.** 350.1395 (4) (b) of the statutes is amended to read:

6 350.1395 **(4)** (b) ~~No rule may be promulgated~~ The department may not  
7 promulgate a rule under this subsection without ~~approval of the rule by the public~~  
8 ~~service commission~~ first consulting with each rail authority in this state, that has  
9 furnished the department with the information required under s. 350.138 (2m), an  
10 established snowmobile association that represents snowmobile clubs, as defined in  
11 s. 350.138 (1) (e), in this state, and the office of the commissioner of railroads.

12

(END)