

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0095/2dn
ARG:bjk:md

November 3, 2008

ATTN: Judy Kelly

As requested, the attached draft adds “national forest” to the definition of “forest road” in created s. 349.05 (1) (a). As discussed, I do not believe this change will have any legal effect. In my view, unless a state or local government has acquired property rights in federal land, the state or local government lacks authority to either dictate the use of federal land or require the federal government to provide authorization of specified uses. In my view, under the supremacy clause of the U.S. Constitution and the principle of federal sovereignty, the federal government has exclusive authority to determine what vehicles may be operated, and where they may be operated, within a national forest.

Based upon comments from our DNR drafter, I also made a technical change in the attached draft in created s. 349.05 (2) (intro.). Please advise if you have concerns about this change. I also note that the draft would not apply to a person who holds only a fishing license. Do you want created s. 349.05 (2) (a) of the draft to also apply to persons who hold a fishing license under s. 29.193 (3) (b) or (c) or (3m)?

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