

1993 Assembly Bill 775

Date of enactment: **December 14, 1993**
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1993 WISCONSIN ACT 120

AN ACT to create 350.137, 350.138, 350.139 and 350.1395 of the statutes, **relating to:** snowmobile rail crossings, granting rule-making authority, providing an exemption from emergency rule procedures and extending the time limit for emergency rules.

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

SECTION 1. 350.137 of the statutes is created to read:

350.137 Uniform snowmobile rail crossing standards. (1) The department, after having consulted with the snowmobile recreational council, shall promulgate rules to establish uniform maintenance standards and uniform design and construction standards for snowmobile rail crossings under ss. 350.138 and 350.139.

(2) The maintenance standards shall include requirements for the marking of snowmobile rail crossings and for the maintenance of adequate drainage of railroad rights-of-way. The design and construction standards shall include a list and a description of the frequency and speed of trains and the types of railroad tracks, embankments, ditches, snowmobile trail alignments and other configurations that do any of the following:

(a) Preclude the use of a proposed site for a snowmobile rail crossing because the site would be unsafe due to poor visibility of the proposed snowmobile rail crossing from the cab of a railroad engine.

(b) Make it difficult to construct a snowmobile rail crossing at a proposed site because of steep embankments or irregular terrain near the railroad track.

(3) No rule may be promulgated under this section without the approval of the rule by the public service commission.

SECTION 2. 350.138 of the statutes is created to read:

350.138 Snowmobile rail crossings requiring permits. (1) **DEFINITIONS.** In this section:

(a) “Established snowmobile rail crossing” has the meaning given in s. 350.139 (1) (a).

(b) “Rail authority” means a rail transit body or a railroad corporation.

(c) “Rail transit body” means any transit or transportation commission or authority or public corporation established by law or by interstate compact to provide rail service.

(d) “Snowmobile alliance” means an organization that consists of or represents any combination of 2 or more snowmobile clubs or counties.

(e) “Snowmobile club” means an organization that meets at least 3 times a year, that has at least 10 members, that promotes snowmobiling and that participates in the department’s program under s. 350.12 (4) (b) 2.

(f) “Snowmobile organization” means a snowmobile club, a snowmobile alliance or a county.

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

(3) CONTENTS OF PERMIT APPLICATION. An application submitted under sub. (2) shall include adequate descriptions and drawings showing the proposed location of the snowmobile rail crossing, the design of the snowmobile rail crossing and the location of snowmobile trails that connect with the snowmobile rail crossing. The department may reject an application within 15 days after it is submitted if the application is incomplete or is not sufficiently detailed to determine whether to approve or deny the application.

(4) PERMIT APPLICATION APPROVAL AND DENIALS. The department shall approve or deny an application submitted under sub. (2) within 60 days after receiving a complete and sufficiently detailed application. The department may deny an application only if the department determines that the proposed snowmobile rail crossing does not comply with the rules promulgated under s. 350.137.

(5) CHARGES. The department may charge an initial application fee not to exceed \$150 for the costs of reviewing a permit application under sub. (4). Neither a rail authority nor the department may charge any other fee or amount for the construction or use of a snowmobile rail crossing or for the use of the right-of-way for the crossing.

(6) LIABILITY INSURANCE. The department shall require a snowmobile organization to maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction or maintenance of a snowmobile rail crossing for which a permit is approved under this section. Regardless of the number of snowmobile rail crossings that the snowmobile organization maintains under this section and s. 350.139, the amount of the liability insurance that is required to be maintained under this subsection shall be at least \$1,000,000 for each snowmobile organization. Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000. Any liability insurance that is required under this subsection for the purpose of indemnifying a rail authority that is a rail transit body shall also indemnify the owners and operators of any railroad using the tracks of the rail transit body.

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

(8) TERMS OF PERMITS. (a) The initial period for a permit approved under this section shall be 11 years. Unless par. (b) applies, the department shall renew the permit for additional periods of time, not to exceed 11 years per renewal, as determined by the department, until the snowmobile rail crossing becomes an established snowmobile rail crossing.

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

(9) INSPECTION AUTHORIZED. The department may inspect a snowmobile rail crossing to determine whether there are grounds to refuse to issue a permit under sub. (4) or to revoke or refuse to renew a permit under sub. (8) (b).

SECTION 3. 350.139 of the statutes is created to read:

350.139 Established snowmobile rail crossings.

(1) DEFINITIONS. In this section:

(a) "Established snowmobile rail crossing" means a snowmobile rail crossing that has been used by snowmobiles for at least 5 winters of the last 10 years.

(b) "Rail authority" has the meaning given in s. 350.138 (1) (b).

(c) "Rail transit body" has the meaning given in s. 350.138 (1) (c).

(d) "Snowmobile organization" has the meaning given in s. 350.138 (1) (f).

(2) NO PERMIT REQUIRED. An established snowmobile rail crossing does not require a permit under s. 350.138.

(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.

(4) REQUIREMENTS. The department shall require a snowmobile organization that maintains an established snowmobile rail crossing to do all of the following:

(a) Maintain the established snowmobile rail crossing in conformance with the rules promulgated under s. 350.137.

(b) Maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction or maintenance of the established snowmobile rail crossing. Regardless of the number of established snowmobile rail crossings and snowmobile rail crossings under s. 350.138 that each snowmobile organization maintains, the amount of the liability insurance that is required to be maintained under this paragraph shall be at least \$1,000,000 for each snowmobile organization. Beginning on January 1, 1997, this minimum amount shall increase to \$2,000,000. Any liability insurance that is required under this paragraph for the purpose of indemnifying a rail authority that is a rail transit body shall also indemnify the owners and

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operators of any railroad using the tracks of the rail transit body.

(5) INSPECTION AUTHORIZED. The department may inspect an established snowmobile rail crossing to determine whether the snowmobile organization maintaining the crossing is in compliance with the requirements imposed under sub. (4).

SECTION 4. 350.1395 of the statutes is created to read:

350.1395 snowmobile rail crossings; closing; review of rail authorities; insurance rules. (1) DEFINITIONS. In this section:

(a) "Established snowmobile rail crossing" means a snowmobile rail crossing that has been used by snowmobiles for at least 5 winters of the last 10 years.

(b) "Rail authority" has the meaning given in s. 350.138 (1) (b).

(c) "Snowmobile organization" has the meaning given in s. 350.138 (1) (f).

(2) CLOSING OF CROSSINGS. (a) Except as provided in par. (b), no rail authority may close or remove a snowmobile rail crossing subject to a permit under s. 350.138 or an established snowmobile rail crossing.

(b) A rail authority may petition the department to review any failure of a snowmobile organization to comply with any requirements imposed under s. 350.138 or 350.139 (4), and to issue an order authorizing the rail authority to close or remove an established snowmobile rail crossing. The department shall decide the matter after notice and hearing. The order issued by the department is a final order of the department subject to judicial review under ch. 227.

(3) REVIEW OF ACTIONS OF RAIL AUTHORITY. A snowmobile organization may request the department to review any failure of the rail authority to comply with s. 350.138 or 350.139 or this section. The department shall decide the matter after notice and hearing. If the depart-

ment finds that the rail authority failed to comply, the department shall issue an order directing the rail authority to take appropriate action in order to comply with this section. The order issued by the department is a final order of the department subject to judicial review under ch. 227.

(4) RULES FOR LIABILITY INSURANCE. (a) The department may promulgate rules to increase the minimum amounts of liability insurance required under ss. 350.138 (6) and 350.139 (4) (b) based on the need for, and the availability and affordability of, such insurance.

(b) No rule may be promulgated under this subsection without approval of the rule by the public service commission.

SECTION 5. nonstatutory provisions. The department of natural resources may use the procedure under section 227.24 of the statutes to promulgate rules for the purpose of setting uniform maintenance, design and construction standards for snowmobile rail crossings under section 350.137 of the statutes, as created by this act. If the department uses this procedure, the department shall promulgate the rules within 90 days after the effective date of this SECTION. Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not required to make a finding of emergency for a rule promulgated under this SECTION. Notwithstanding section 227.24 (1) (c) and (2) (a) of the statutes, the effective period of a rule promulgated under this SECTION is for one year after its promulgation. Notwithstanding section 350.137 (3) of the statutes, as created by this act, a rule promulgated under this SECTION does not require approval by the public service commission.

SECTION 6. Effective date. This act takes effect on January 2, 1994, or on the day after publication, whichever is later.