



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ENHANCING RECREATIONAL TRAILS FOR NON-MOTORIZED USE

FROM: Mark Patronsky and Don Salm, Senior Staff Attorneys, and Dan Schmidt, Senior Analyst

RE: Issues for Discussion by Members and Related Background Information

DATE: September 19, 2008

INTRODUCTION

This Memo was prepared for the Legislative Council's Special Committee on Enhancing Recreational Trails for Non-Motorized Use. The Memo sets forth issues, alternative solutions, and background information related to those issues that the committee may wish to consider as it commences developing its legislative recommendations to the Joint Legislative Council. The issues and alternatives are drawn, in general, from: (1) suggestions made by committee members and persons participating in the August 14, 2008 meeting of the committee; and (2) research done by, and materials received by, staff following the August 14 meeting.

The issues and alternative solutions referenced to date are the following:

NON-MOTORIZED TRAIL ISSUES

Trail Planning and Policies: Non-Motorized Trails Council

The committee requested discussion of a proposal to create a non-motorized trail council, the purpose of which would be to give non-motorized trail users a separate and stronger voice in making policy suggestions relating to trails. In the statutory structure of the executive branch of state government (ch. 15 of the statutes), a "council" is a "part-time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government." The Department of Natural Resources (DNR) is currently advised by two statutory councils related to trails, the Snowmobile Recreational Council and the State Trails Council. The DNR is also advised by the Off-Road Vehicle Advisory

Council, the statutory existence of which was repealed in 1999 but which was continued by the DNR. The State Trails Council represents trail users in Wisconsin and provides advice in administering the Federal Recreational Trails Program funds.

Legislation to create a council can specify qualifications for membership, which can be broad (knowledgeable in recreational uses of non-motorized trails), specific (users of trails for bicycle riding or hiking), or ex officio (the executive director of the Wisconsin County Forest Association) or the DNR board or secretary could be directed to appoint members. Some councils include specified members of the Legislature or specified secretaries of state agencies. A council could also include non-voting liaison representatives such as state agency secretaries or their designees.

Legislation to create a council can also specify in a very general way, or specifically, the responsibilities of the council.

Estimate of Funding Necessary to Complete the Trail System and to Develop and Maintain It

The Wisconsin State Trail's Network Plan was completed in 2001 and approved by the Natural Resources Board. (<http://dnr.wi.gov/org/land/parks/reports/trails/>) The purpose of the plan is to give a long-term program for creating a comprehensive trail network in the state. The plan identifies existing trails and emphasizes connectedness, although it does not include all state trails, primarily the major connected trails. The purpose for the plan, among other things, is to speed up land acquisition projects by making critical acquisition decisions early, rather than closer to the time of purchase.

Legislation could direct the DNR to evaluate in detail the costs of completing the trail system as a way of helping to establish priorities for trail acquisition, to make diligent efforts to complete the trail system, and to avoid missed opportunities when land becomes available for trail acquisition. The information on acquisition costs, as well as development and maintenance costs, can also aid in legislative decisions regarding potential expanded or new funding sources.

Study of the Effect of Gasoline Prices on Trail Use in the Long Term

It is likely that increased gasoline prices will have a direct effect on trail use as more individuals decide to use trails for commuting and other personal business (such as shopping) and as the use of trails for non-motorized recreation increases if the expense of motorized recreation is affected by the cost of fuel. A rapid increase in gasoline prices could quickly increase the demand for trail purchase and construction. It may be prudent for the Legislature to direct a study of the potential trends of gasoline prices and consumption and the effect of those trends on trail use in the long term.

MOTORIZED TRAIL USE ISSUES—CONFLICTS AND SOLUTIONS

Noise Standards for All-Terrain Vehicles (ATVs)

Under the current statutes, an ATV may not be manufactured, sold, rented, or operated that exceeds 96 decibels on the A scale as measured by procedures promulgated in DNR rules. The current testing procedures are relatively easy to administer and do not require the vehicle to be moving. DNR is purchasing sound meters and the majority of the warden force is trained to use them. The 96 decibel standard is typical nationwide. County sheriffs are also able to do sound testing and DNR reimburses

county sheriffs for the purchase of sound meters. These efforts could be continued, with the same or increased levels of enforcement, by legislative direction.

DNR Safety Education Programs

DNR offers a number of safety education programs, including three for motorized vehicles (ATVs, boats, and snowmobiles). These three programs each emphasize regulations, responsibility, and ethics. [Note: The DNR is also directed by the ATV statutes to establish a public education program regarding the hazards of operating an ATV while intoxicated.]

The DNR also publishes a pamphlet (*Wisconsin Trail Etiquette and Safety Guidelines*), which is addressed to all types of trail users. (<http://dnr.wi.gov/org/land/parks/trails/Etiquette.pdf>)

The special committee could review these safety education programs to determine if additional information could be provided to students to reduce conflicts between motorized and non-motorized trail users.

Safety Hazards of Linear Trails

Trails that are straight and level may cause safety concerns due to the high speeds attainable by ATVs and snowmobiles. This may affect not only trail users but also residents and landowners nearby who may need to cross the trail on an easement or other access. This is a difficult problem to address because the trail corridor is typically narrow and does not have sufficient land area to meander the trail. The special committee may consider recommending funding for a program to design trails so as to reduce vehicle speeds. It can be argued that reduced speeds will not only make trail riding by these vehicles safer for all concerned, but also more enjoyable.

Trespass Citation Amount

The current citation for a trespass violation involving an ATV is a \$100 forfeiture plus additional fees to make the total penalty \$249. The forfeiture for trespass onto the property of another by ATVs could be increased to an amount above the current \$100. The increased forfeiture may reduce the frequency of trespassing while riding an ATV. It should be noted that, under the Wisconsin Constitution, the increased forfeiture amount will be deposited into the school fund. The Constitution requires the “clear proceeds” of all fines and forfeitures to be deposited in that fund.

Trespass Citation Surcharge

The special committee could consider adding an additional fee or surcharge for trespass with an ATV, with the amount of funds collected from that fee or surcharge placed in a fund for reimbursing property owners (both public and private) for the costs of repairing damage caused by persons who trespass with an ATV. It should be noted that Minnesota had a program for paying property owners for damages caused by ATVs, but found that it was difficult to identify the trespassers.

FUNDING FOR NON-MOTORIZED TRAILS—NEW SOURCES AND MODIFICATIONS OF CURRENT SOURCES

Changes in State Trail Pass

In a September 16, 2008 email responding to a request from special committee staff for information relating to the State Trail Pass program, Brigit Brown, DNR, State Trails Coordinator, Wisconsin State Park System, noted the following:

We have tried for several years to improve the state trail pass program: new, clear policies on where, when, and how to enforce the pass, increased enforcement, increased signage, more and easier ways to purchase the trail pass, a volunteer trail patrol (volunteers patrol the trails and sell passes), including trail safety and etiquette basics on the back of every trail pass. All have met with some success, but the program is far from perfect. With our current limitations (mostly financial), I'm afraid we've implemented every improvement that we can think of.

You'd asked about the trail pass survey. Earlier this year we created a new survey of state trail pass users. We've had the survey in place for several months and have received some great feedback. Attached is a preliminary synopsis of the results. The survey is online: <http://doa.wi.gov/DNRSurveys/TakeSurvey.aspx?SurveyID=9IKL4n3> and will remain open indefinitely. A link to the survey appears on every state trail pass.

One idea, beyond our current capabilities, would be to change the physical trail pass to something that is rechargeable annually using a system that would capture personal information about purchasers allowing us to send out renewal notices, etc.

Tax Checkoff

The committee requested consideration of a voluntary tax checkoff on the state income tax form. The proceeds of the checkoff would provide additional funding for non-motorized trails in Wisconsin.

An income tax checkoff permits individuals to add an additional amount to their tax payment for use by the program specified in the checkoff. The option is located at the end of the Wisconsin income tax form. Current income tax form checkoff payments include the following: endangered resources, professional football district, breast cancer research, fire fighter's memorial, veterans trust fund, multiple sclerosis programs, and prostate cancer research.

2006 preliminary estimates indicate revenues of approximately \$424,000 for the largest of the checkoffs, endangered resources, to approximately \$50,000 for the smallest checkoff, the fire fighter's memorial. The endangered resources fund checkoff donations have decreased from \$637,000, a high in 1998. The 2007 average donation for each individual checkoff was \$9.

An income tax checkoff for non-motorized trails was included in the proposal submitted by the 2006 Special Committee on State Trails Policy [2007 Senate Bill 185].

Sales Tax on Certain Recreational Equipment

The committee requested consideration of increasing the sales tax rate on consumer products that are used for recreational purposes on non-motorized trails. Examples included bicycles, hiking boots, equestrian tack, and cross-country skis. Such a rate increase would require retailers to account separately for products which would be subject to tax at a different rate. Also, it could be a challenge to determine the applicability of this tax to products that have multiple uses.

Rebate or Credit Based on Activities That Cause Emissions

The committee requested consideration of a rebate or credit to state trail funding based on the conservation of energy or natural resources by non-motorized trail users. This credit would be based on a principle similar to that of the current gas tax rebate that is deposited in the ATV account of the conservation fund.

ATVs, snowmobiles, and boats receive a rebate based on the notion that these vehicles are not operated on highways and, therefore, should be allowed to contribute less fuel tax to highway maintenance and should be allowed to use those funds for improvements to trails and waterways. The current gas tax payment is calculated by multiplying the sum of the number of ATVs registered for public use (i.e., on public trails or routes) and the number of reflectorized plates issued for commercial ATV use (i.e., manufacturers, dealers, or distributors, or other persons engaged in the business of renting ATVs) on the last day of February of the previous fiscal year. This number is multiplied by 25 gallons and that product is multiplied by the excise tax on the last day of February of the previous fiscal year (currently, \$.309 per gallon).

The committee will have to consider a specific formula that would provide similar credits from the gas tax revenues for the conservation of gas or natural resources in travel and recreation on state trails.

Vehicle Registration Fee

The committee requested consideration of increasing the motor vehicle registration fee to fund non-motorized trail acquisition and maintenance.

This fee may be similar to the environmental impact fee of \$9 currently included with vehicle registration fees [s. 342.14 (1r), Stats.]. The fee would be collected upon registration and credited to the non-motorized trail fund for trail acquisition and management.

Special License Plate: Non-Motorized Trails

The committee requested consideration of revenues from sales of a special motor vehicle license plate under s. 341.14 (6r) f., Stats., which currently designates 57 different special groups for such plates. For example, the last group designated was the Wisconsin Women's Health Foundation, Inc. Since 2005 Wisconsin Act 199, which created that special plate, is typical of legislation creating such

plates, the following description of the act and excerpts from the Department of Transportation (DOT) fiscal estimate for the legislation may assist the committee in its discussion of the structure of, and the potential costs and revenues from, a legislative proposal relating to the creation of special license plates for non-motorized trails.

2005 Wisconsin Act 199 established special distinguishing registration plates to fund the efforts of the Wisconsin Women's Health Foundation, Inc. The act required an annual contribution of \$25 in addition to the regular registration fee (\$50 for issuance or renewal of a plate issued on a biennial basis). This plate is also subject to the current law requirement of a \$15 issuance or reissuance fee for special group plates. The act directed that the first \$27,600 of contributions would be retained in the transportation fund to offset the cost to the DOT's Division of Motor Vehicles (DMV) for the initial costs of production of this special group plate. The act provided for an additional \$8,000 for DMV start-up costs related to design and production of the plates (for a total of \$35,600). The DOT fiscal estimate for the original bill (2005 Senate Bill 282), dated August 30, 2005, included the following:

In DMV's experience, special plate sales are strongest in the first year the plate is available, and decline significantly after that. Also, as more choices for special plates are available, the market for any one type of special plate is limited.

First-year plate sales have varied widely. The Endangered Resources plate sold 13,000 in its first year and the Green Bay Packer plate sold 8,357 (compared to the Packer's estimate of 40,000 plates in the first year, and with aggressive marketing). On the other hand, Celebrate Children plates sold 2,200 in the first year. University plates for all campuses combined sold 900 the first year. Ducks Unlimited sold 985 (compared to DU's estimate of 10,000 plates in the first year, and with aggressive marketing).

Use of General Purpose Revenue (GPR)

The committee requested consideration of the use of GPR for funding of non-motorized trails. GPRs consist of general taxes, miscellaneous receipts, and revenues collected by state agencies that are paid into the general fund and are then available for appropriation by the Legislature.

The committee suggested the consideration of using GPR based on the assumption that non-motorized trail use is a broad-based activity among Wisconsin citizens which should therefore be supported by the state residents and visitors through broad taxation.

Real Estate Transfer Fee Increase

The committee recommended the consideration of an increase in the real estate transfer fee, which is currently imposed at a rate of \$.30 for each \$100 of value of property conveyed. The fee is imposed upon sellers of real property and is collected when the document evidencing the conveyance is filed at the county office of the Register of Deeds. Currently, the county retains 20% and the state receives 80% of real estate transfer fee collections. Fiscal year 2006-07 collections totaled approximately \$89,600,000. The state portion of an increase in the real estate transfer fee of \$.10 per

\$100 of value, if the state kept all revenues from the fee, would generate approximately \$8,960,000 annually.

The state portion of moneys collected from the real estate transfer fee are deposited into the general fund of the state budget.

Water Trail--Canoe Registration

The committee requested consideration of expanded funding to Wisconsin's Water Trails program. While a few water trails still exist in Wisconsin (Lake Superior Trail, Kickapoo River Trail, Milwaukee Urban Trail), little comprehensive planning, funding, and maintenance has been done for these trails recently. Members also recommended that the committee consider funding of the trails through mandatory canoe and kayak registration fees.

Canoe and kayak registration has been proposed in the past to provide funds to develop water trails (e.g., parking, camp sites, launch sites). Canoes and kayaks are currently exempt from registration under Wisconsin's boat registration statute. The committee could discuss whether to expand boat registration to apply to canoes and kayaks or whether to create a separate registration system for those water craft. DNR estimates that a canoe and other non-motorized water craft registration would generate \$800,000 per year at the cost of \$11 for a three-year registration. The current boat registration system funds statewide boating inspection, boating safety education, state aids to local units of government for boating law enforcement, and funding for state level boating safety and law enforcement.

In a 1973 Wisconsin Supreme Court case, the Court affirmed the constitutionality of the boat registration fees and the statutory authorization for the expenditure of those fees by the DNR for the purposes designated in the statute. The public trust doctrine in navigable waters in Wisconsin's Constitution provides that the navigable lakes and streams are held by the state in trust for its citizens, and that citizens are entitled to use navigable waters for navigation and recreational purposes. The Constitution prohibits the imposition of any tax on use of navigable waters. The Court held that the registration program is funded by a "license fee," which is primarily for regulation and is intended to cover the cost of the expense of that regulation. A fee that is primarily for the purpose of raising revenue, as stated by the Court, would be an impermissible tax under the Constitution. A fee for canoe and kayak facilities development would likely be viewed as a tax and, thus, it is likely that a court would hold that this use of the funds from canoe or kayak registration would not be valid under the public trust in navigable waters.

Budget Structure--Segregated Account (SEG Fund) for Non-Motorized Trail Funding

The committee requested consideration of a segregated funds account (SEG) in the state budget for non-motorized trails. The source of funds for the SEG account may come from state trail passes, the voluntary non-motorized trail checkoff, or other fees yet to be determined by the committee.

"*Segregated funds*" consist of revenues (generally fees, but may also include GPRs which are, by law, deposited into funds other than the general fund and are available for the purposes for which the fund was created. GPR consists of general taxes, miscellaneous receipts, and revenues collected by state agencies that are paid into a specific fund, lose their identity, and are then available for appropriation by

the Legislature. Segregated funds generally maintain their “identity” of intended use. It was suggested by committee members that a segregated fund or an account within a current SEG fund would assure the availability of non-motorized trail funding in the future.

It should also be noted that the Joint Finance Committee cannot transfer moneys between SEG funds or accounts within SEG funds, without express legislative authority, either one-time or ongoing.

It is important to note here that a segregated fund does not necessarily provide any protection from future diversion of its funds. The Legislature may lapse moneys from any fund (general, segregated, or program revenue) into the general fund for general purpose use even if the revenues of the fund are derived from fees rather than taxes. The only exception to this rule is for funds in which persons have contractual or vested rights.

MECHANISMS TO ENCOURAGE OWNERS TO ALLOW USE OF PRIVATE LAND

Incentives to Owners

The committee’s charge directs the committee to review the availability of private land for non-motorized recreation and address ways to increase that availability. The committee could consider the following:

- Compensate, either through direct payments or tax incentives, private landowners who agree to allow access to their property for non-motorized trails, as is currently done under s. 23.33 (5r), Stats., regarding ATVs.
- Devise programs to encourage persons who want to engage in activities on non-motorized trails located on private lands to ask the landowner before doing so even if permission has already been given, and require DNR to educate these persons to act responsibly while using the land.
- Increase the amount of compensation that property owners may receive while still remaining subject to the statutory limitation of liability for property owners who permit recreational uses of their land. Currently, a landowner may not accept more than \$2,000 annually for use of the land.

DNR Warden Trespass Enforcement on Public Land

The issue of DNR warden enforcement of trespass on public land has been discussed for a number of years and generally has had the support of the warden force. The current statutes prohibit the operator of an ATV from operating on the private property of another without the consent of the owner or lessee. The statutes could be modified to add public land (primarily county forests) to this prohibition so that DNR wardens would also be authorized to enforce the prohibition of trespass on public lands, as well as on private lands as under current statutes. This would potentially assure that ATV operators obtain permission wherever the vehicles are operated.

Warden Workload

The special committee could review the workload of wardens who enforce ATV regulations. Currently, nine full-time equivalent (FTE) positions are allocated to ATV funding. The program ran out of money in June 2008 (the end of the prior fiscal year). There has not been a recent workload analysis for ATV enforcement. A 2002 workload analysis for snowmobiles showed that although nine warden positions were assigned to the snowmobile enforcement effort, at least 14 positions were needed for that purpose. The number of wardens assigned to ATV enforcement has not increased since 2000, but the number of ATVs has increased rapidly since then.

Other Issues for Possible Consideration by the Committee

Among the other topics and issues referenced briefly at the committee's first meeting were:

- Promoting, or funding promotion of, the use of volunteers for trail maintenance.
- Creating a gas tax rebate related to the use of trail grooming equipment.
- Research on tourism related to non-motorized trail activities.
- Use of volunteers.
- Gas tax rebate for trail grooming equipment.
- Recommend expenditure of a larger portion of federal highway funding on non-motorized trails.

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