



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

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

FROM: Dan Schmidt, Senior Analyst

RE: Summary and Recommendations of the 2006 Legislative Council Special Committee on State Trails Policy

DATE: August 4, 2008

This Memo describes the assignment and recommendations of the 2006 Special Committee on State Trails Policy. It also summarizes the results of those recommendations and related policies during the 2007-09 Legislative Session. This Memo is being distributed to members of this committee in order to brief members about the prior study committee and to assist members in formulating issues and possible legislative changes in deliberations relating to recreational trails for non-motorized use.

### **COMMITTEE ASSIGNMENT**

The Special Committee on State Trails Policy, established in June 2006, was directed: (1) to review the current policies for the acquisition, development, and management of public use trails in Wisconsin by all state agencies and local governmental units, and including connecting trails that are privately owned; (2) to review issues related to public use trails within the state, including planning for trail acquisition and use, involvement of trail user groups, design and construction of trails, location and connection of trails, designation of certain trails for specific uses, methods for addressing user conflicts, benefits of trails for economic development, and funding for trails; (3) to place particular emphasis on issues related to trail uses by motorized vehicles; and (4) to recommend, as appropriate, a comprehensive policy for trails in this state or methods for the development of a state trails policy, and methods for state agencies and local governmental units to implement state trail policies.

**RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON STATE TRAILS POLICY: 2007**  
**SENATE BILL 185**

The recommendations of the Special Committee on State Trails Policy were compiled in 2007 Senate Bill 185 and introduced for legislative consideration by the Joint Legislative Council. A summary of the provisions of the bill follows.

**Establishment and Use of Trails**

***ATV Trail Certification***

○ ***Background***

Current all-terrain vehicle (ATV) statutes require the Department of Natural Resources (DNR) to encourage and supervise a system of ATV routes and trails. To fulfill this charge, the statutes permit DNR to establish standards and procedures for certifying the designation (i.e., approval to receive state funds) of ATV routes and trails. The DNR has issued standards and procedures for ATV use on department lands as guidance documents. The committee proposes to make the internal guidance documents law through the administrative rule-making process, further exposing the current standards and procedures to public and legislative scrutiny.

○ ***Description***

The bill requires DNR to promulgate administrative rules to establish standards and procedures for certifying the designation of ATV routes and trails under the control of DNR. By requiring the standards and procedures to be promulgated as rules, this draft will require public hearings on the current policies, and any changes to those policies, through the agency process for developing rules and the legislative administrative rule review process. The DNR must also consider the interests of the State Trails Council and other trail user groups when promulgating the rules required under this provision.

***ATV, Snowmobile, and Off-Road Vehicle Trespass***

○ ***Background***

The committee heard public testimony regarding the extensive damage caused by motorized vehicle trespassers. Testimony indicated that such damage was not limited to private property. The committee proposes to reduce such activity by extending the trespass prohibitions for ATVs, snowmobiles, and other motor-driven craft or vehicles to all property, and by increasing the penalties for trespassing. The committee elected to exempt the rights-of-way of public highways because the use of such areas is regulated under other statutes.

The current statutes contain a general provision on trespass to land in s. 943.13. This statute prohibits any person from entering the land of another without the express or implied consent of the owner or occupant, or remaining on the land of another after being notified to leave. This statute applies whether or not the person is in a vehicle, and therefore would apply to trespass by a person who is operating an ATV, snowmobile, or other off-road vehicle. The penalty for violation of this statute is a

Class B forfeiture, which is a civil penalty of a forfeiture not to exceed \$1,000. The trespass statute is enforced by local law enforcement authorities. The DNR wardens do not have authority to enforce the trespass statute. The trespass statute is enforced by a citation system, similar to that for a traffic citation.

The current statutes also have provisions regarding entry onto the private property of another without the consent of the owner or lessee, when operating an ATV, snowmobile, or other off-road vehicle. The penalty for violation of these statutes is a forfeiture not to exceed \$250. This statute is enforced by DNR wardens.

- ***Description***

The bill expands the prohibition on the operation of ATVs, snowmobiles, or other motor-driven craft or vehicles from the current private property standard, to any property that is not the right-of-way of a public highway. As previously mentioned, it also creates an exception so that the expanded statute does not apply to a public highway right-of-way.

The bill increases the penalty for violation of the current statute that prohibits trespass with an ATV, snowmobile, or other motor-driven craft or vehicle to a forfeiture of not less than \$250 and not more than \$1,000.

It is also possible, under the bill, for the district attorney to issue a complaint and summons and seek a forfeiture up to the maximum of \$1,000.

### ***ATV Damage Claim Program***

- ***Background***

In furtherance of efforts to minimize landowner damage due to ATV trespass, the committee also recommended the establishment of a reimbursement program for victims of ATV damage. There is no ATV damage claim program under current law. If a person's property is damaged by the operation of an ATV in an area not designated for ATV use, the only remedy is through court-ordered restitution as the judgment in a lawsuit.

- ***Description***

The bill establishes an ATV damage claim program under which an applicant may receive a payment for the repair or restoration of property damaged by the operation of ATVs in any area not designated as an ATV route or ATV trail. The provision requires DNR to promulgate rules for implementation of the program.

The provision requires DNR to verify that certain minimum standards are met regarding the awarding of the payments. These standards include:

1. That the damage to the property was caused by the operation of ATVs in an area not designated as an ATV route or ATV trail.

2. That the applicant reports the trespass and makes reasonable efforts to identify the responsible individual and obtain payment from the individual.
3. That the applicant makes reasonable efforts to prevent reoccurrence of the damage.

In addition, the draft provides that DNR may submit a claim only if all eligible claims in an annual payment cycle are paid in full.

### **ATV Title and Registration**

#### ***Certificate of Title for ATVs***

##### ***o Background***

During public hearings of the committee, concerns were expressed regarding: (1) establishing correct ownership of ATVs; and (2) verification that ATVs are clear of liens at the transfer of ownership. In response to these concerns, the committee proposes that all ATVs be required to have a certificate of title.

##### ***o Description***

The bill creates a requirement for the owner of an ATV to obtain a certificate of title. Any owner of an ATV that is subject to registration in this state must comply with the titling requirement. The titling requirement applies to the owner of a newly acquired ATV and to the owner of an ATV who applies for registration without holding a previously issued certificate of title. Any ATV that is exempt from registration in this state is also exempt from the titling requirement. Although nonresidents who register an ATV in another state are not required to apply for a certificate of title, a nonresident may choose to obtain a Wisconsin title for an ATV purchased in this state.

The DNR is directed to implement the provisions of the draft by promulgating administrative rules applicable to the procedures for application for a certificate of title, issuance of a certificate of title, recordkeeping, replacements, transfer of title, security interests, and all other provisions necessary for the titling program. The DNR is directed to set and collect fees established by rule which shall, as closely as possible, equal the cost of providing services related to ATV titling. The funds collected by DNR will be placed in the Conservation Fund.

The bill also contains a prohibition on the intentional falsification of an application for a certificate of title or a certificate of title, and the intentional authorization, removal, or change of any number or character in an ATV engine serial number or ATV serial number. This provision makes violation of those prohibitions a Class H felony. The maximum penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

The effective date of the draft is prospective and commences January 1, 2009. This effective date provides that the owner of an ATV newly purchased on or after January 1, 2009 or the owner of an ATV who applies for registration on or after January 1, 2009 and does not have a valid certificate of title previously issued must obtain a certificate of title for the ATV.

### ***Display of ATV Registration Number***

#### ***○ Background***

Under the current ATV statutes, no person may operate or give permission to operate an ATV unless the ATV is registered for public use (i.e., for use on public trails or routes) or for private use (i.e., used exclusively on private property), or is exempt from registration, or is issued a commercial ATV certificate (i.e., manufacturers, dealers, or distributors, or persons engaged in the business of renting ATVs). A person who registers an ATV for public use must display two registration decals on the vehicle. The DNR, by administrative rule, specifies the size of the decals and the information required to be contained on the decals. The DNR also designates authorized distributors of registration decals. There is no license plate or other requirement to display registration numbers on an ATV.

The committee heard testimony indicating that: (1) the recovery of damages caused by ATV trespass was often hampered by landowners' inability to identify the trespassing offender; and (2) the inability to identify an ATV trespasser was often due to the inability to see the registration numbers on the trespasser's ATV as the offender fled the scene. The committee proposes that DNR promulgate rules for the prominent display of registration numbers with a minimum requirement of the display of the registration number at the rear of the ATV.

#### ***○ Description***

This bill creates a requirement for the operator to display the registration number on an ATV that is registered for public use. The DNR is required by the bill to specify the manner of displaying the registration number. The registration number must be displayed in a prominent manner and, at a minimum, must be displayed at the rear of the ATV.

### ***Fees and Appropriations***

#### ***ATV Gas Tax Payment***

#### ***○ Background***

After hearing public testimony regarding limited funding, the committee sought to identify ways to increase funds for ATV trails. The first source identified was the gas tax payment made to the Conservation Fund under s. 25.29 (1), Stats. The gas tax payment formula was derived from the notion that because ATVs, snowmobiles, and boats are not operated on highways, they should be allowed to contribute less fuel tax to highway construction and maintenance and use those tax dollars for construction and improvements to trails or waterways. Funds generated by the ATV gas tax formula are paid to the DNR Conservation Fund and are used to provide aid to towns, villages, cities, counties, and federal agencies for nonstate ATV projects.

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.

The committee decided that current ATV gas tax payments are inadequate because there are currently more ATVs than snowmobiles in Wisconsin and ATVs are operable on a year-long basis. Thus, the committee argued that more total fuel and time is spent on ATV trails than for which the current payment provides. This provision of the bill is intended to remedy the gas tax funding shortfall for ATVs.

- *Description*

The bill repeals the current ATV gas tax formula and replaces it with a new formula similar to the snowmobile gas tax payment. The new ATV gas tax payment, created by the bill, is calculated by multiplying the number of ATVs registered for public use and the number of reflectorized plates issued for commercial ATV use on the last day of February of the previous fiscal year by 50 gallons and multiplying that product by the motor vehicle fuel excise tax on the last day of February of the previous fiscal year. This total is then increased by an additional 40%.

Based on DNR estimates of approximately 230,000 public ATV registrations, and assuming that those registrations will not increase, the current fee raises about \$1.7 million annually. Assuming the same 230,000 registrations, the fee increase in this provision of the draft would raise approximately \$5 million annually. The result is an increase in revenue of approximately \$3.3 million annually.

### *ATV Fee Increases*

- *Background*

The next source of ATV trail funding identified by the committee comes from ATV registration fees. Under current law, no person may operate, and no owner may give permission for the operation of, an ATV within the State of Wisconsin unless the ATV is registered for public use (i.e., for use on public trails or routes), private use (i.e., used exclusively on private property), is exempt from registration, or is certified for commercial use (i.e., manufacturers, dealers, or distributors or persons engaged in the business of renting ATVs), or has a nonresident trail pass. The committee recommends that additional funding for ATV trails and enforcement be derived from increases in current registration and trail pass fees.

- *Description*

The bill increases the fee for issuance or renewal of a registration certificate for public use of an ATV from \$30 to \$50. This registration is valid for two years.

Based on current DNR estimates that approximately 230,000 ATVs share a public registration (calculated at 115,000 registrations per year to generate the annual number), the current fee raises about \$3.5 million annually. Assuming the same 230,000 registrations, under this provision of the bill, the fee increase would raise approximately \$5.75 million annually. The result is an increase in revenue of approximately \$2.25 million annually.

The bill increases the fee for issuance of a registration certificate for private use of an ATV from \$15 to \$25. The private registration is valid from initial purchase of the registration to the time that ownership is transferred.

The DNR estimates that approximately 5,000 ATVs are registered for private use each year. The current fee of \$15 raises about \$75,000 annually. Assuming a continued 5,000 private registrations each year, the increased fee, at \$25, would raise approximately \$125,000 per year. The result is a revenue increase of approximately \$50,000 annually.

The bill increases the fee for issuance or renewal of a certificate for commercial use of an ATV from \$90 to \$100. The commercial certificate is valid for two years.

Based on DNR estimates that approximately 650 ATVs are registered for commercial use annually, the fee currently raises about \$60,000 annually. Assuming the same 650 annual registrations in the future, under this provision of the bill, the new fee would raise approximately \$65,000 annually. This results in a revenue increase of about \$5,000 annually.

The fee for additional plates is also increased under the bill. The current fee of \$30 per reflectorized plate is increased to \$40 per plate for each additional plate that is issued beyond the three plates that are issued with the commercial certificate.

The DNR estimates of approximately 100 additional plates sold per year result in revenue of approximately \$3,000 annually under current law and approximately \$4,000 annually under the new provisions. The increase results in an approximate increase of \$1,000 annually.

The bill increases the annual fee for a nonresident ATV trail pass from \$17.25 to \$44.25 and establishes a new seven-day nonresident trail pass for a fee of \$17.25. The current statute requires DNR to collect an issuing fee of \$0.75 for issuing a nonresident ATV trail pass. This provision will increase the amount of the total fee for each annual and seven-day nonresident trail pass to \$45 and \$18, respectively.

Based on current nonresident ATV trail pass sales estimates of 12,500 annually, the current fee raises approximately \$215,000 annually. Assuming, under the new fees, that 80% of the nonresidential ATV trail users will purchase a weekly pass and the remaining 20% of nonresident ATV trail users will purchase an annual pass, the weekly pass will raise approximately \$250,000 annually and the annual pass approximately \$63,000 annually. This results in total annual revenue projection of approximately \$313,000, an increase of approximately \$98,000 annually.

### ***Appropriation Changes***

#### ***○ Background***

The committee recommended appropriation of the increased funding derived from registrations and passes to ATV project aids and ATV enforcement in order to promote ATV trail development and limit damages due to trespass or unauthorized use.

In addition, the committee heard testimony from users of the Ice Age Trail System that a portion of the system that is routed through the Wild River Trail and the Tuscobia Trail is no longer practical for hiking use because these trails have been opened to ATV use. The committee agreed to provide funding to reroute the Ice Age Trail System away from these trails to restore hiking use.

- ***Description***

The bill increases the ATV project aids appropriation under s. 20.370 (5) (cu), Stats., from \$1,600,000 for each fiscal year 2005-06 and 2006-07, to \$3,900,000 for each fiscal year 2007-08 and 2008-09. It increases the ATV enforcement appropriation under s. 20.370 (5) (er), Stats., from \$200,000 for each fiscal year 2005-06 and 2006-07, to \$500,000 for each fiscal year 2007-08 and 2008-09.

The bill also provides funds in the amount of \$500,000 total (\$250,000 per biennium 2007-09) for DNR to reroute a segment of the Ice Age Trail which is now part of two trails, the Wild River Trail and the Tuscobia Trail, that allow the use of ATVs.

### ***Income Tax Checkoff for Non-Motorized Trails***

- ***Background***

While the majority of the committee primarily emphasized the importance of improving trail access for ATVs as is evidenced by the prior motorized vehicle proposals, several members also wanted to include non-motorized trail funding in the committee package. After deliberation, the committee agreed to increase non-motorized trail funding through an individual income tax check-off.

- ***Description***

The bill establishes a non-motorized trail program to be administered by DNR. The program is funded from an individual income tax check-off that will be placed on income tax forms. Donations to the program will be made by individual taxpayers on a voluntary basis.

## **RESULTS OF 2007 LEGISLATIVE SESSION**

2007 Senate Bill 185 failed to pass during the 2007-09 session. However, several similar provisions were enacted in 2007 Wisconsin Act 20, the 2007-09 state budget. These provisions are described below.

### **ATV Fee Increases**

2007 Wisconsin Act 20 increased the fee for an annual nonresident trail pass from \$18 to \$35, effective July 1, 2008. The increase in funds generated by the higher fees is intended to fund an ATV landowner incentive program for private landowners who permit public ATV corridors on their lands.

### **ATV Trail Projects**

2007 Wisconsin Act 20 provided \$300,000 in 2007-08 for improvements to existing ATV trails at the Richard I. Bong State Recreational area.

The Act also provided \$50,000 in 2007-08 for a brochure to provide information on recreational and tourism opportunities near ATV trails in Wisconsin.

**ATV Enforcement**

2007 Wisconsin Act 20 increased aids to counties for the cost of ATV law enforcement patrols by \$300,000 annually (to \$500,000 total) and an additional \$50,000 annually (\$300,000 total) for ATV safety enhancement grants to promote the operation of ATVs in a safe and responsible manner.

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