



## 2009 SENATE BILL 265

August 11, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

1     **AN ACT** *to create* 20.370 (5) (cz), 20.855 (4) (v), 23.176, 25.29 (1) (dr), 25.29 (1r),  
2           25.40 (3) (b) 17. and 227.01 (13) (zzb) of the statutes; **relating to:** nonmotorized  
3           trail maintenance and use, granting rule-making authority, and making  
4           appropriations.

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### ***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Enhancing Recreational Trails for Non-Motorized Use. The bill:

**Funding.** Authorizes the Department of Natural Resources (DNR) to expend funds in a nonmotorized trail maintenance and use program. The funding mechanism consists of segregated funds from the conservation fund and is a continuing appropriation, allowing DNR to retain and expend in future fiscal years any funds that are not expended in the current fiscal year. The amount placed in the appropriation for each fiscal year is either \$10 million or 1% of the amount of the motor fuel tax collected in the prior fiscal year, whichever is less.

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Nonmotorized Trails Maintenance and Use Program. Creates the nonmotorized trails maintenance and use program in DNR. Funding for the program is described above. The DNR is directed to implement the program by promulgating rules necessary for the program and for distributing the funds for trail maintenance and use. The funds are distributed: (1) directly to state agencies; and (2) to local units of government and to nonprofit organizations for nonmotorized trails.

Trails are an important part of Wisconsin's effort to increase transportation options to state residents and have a major impact on the state's multi-billion dollar tourism industry, attracting many visitors from outside of the state. Improved trails may decrease overall traffic congestion by giving commuters another option when traveling. Increased commuter trail use may also reduce overall travel time and fuel consumption.

One of the issues that is common to all trails is the ongoing need for maintenance. Without maintenance, or with insufficient maintenance, trails may become unusable. At a minimum, when trails are eroded, rutted, overgrown, or otherwise deteriorate, trail use is likely to decrease significantly.

The Warren Knowles – Gaylord Nelson stewardship program provides a significant source of funds for acquisition of land for trail corridors, and funding for initial development of trails, but without funding for maintenance, a purpose for which the funds are not currently available. With respect to maintenance, the special committee identified a disparity between trails used for motorized and nonmotorized activities. Snowmobiles and all-terrain vehicles each have a source of funding for trail maintenance in the registration fees paid for the vehicles, and from motor vehicle fuel tax transfers. There is no comparable source of revenue for maintenance of nonmotorized trails. Although the state has a trail pass, it is required for the use of only a limited number of trails, and does not produce enough revenue for more than a very basic trail maintenance program.

With the current economic conditions, nonmotorized trails are becoming increasingly significant as a method of transportation that can be used for getting to work, school, recreation, and shopping. These trails provide many benefits, such as reducing the use of nonrenewable resources; giving the trail user an opportunity to reduce personal transportation costs compared to driving a motor vehicle; reducing traffic congestion, noise and air pollution; and delaying the need for future road and bridge projects. These economic benefits are likely to increase over time. Nonmotorized trails also provide social benefits as people travel the trails together and gather at destinations. With regard to tourism, one of the state's major industries and attractions, resident and nonresident users of these trails increase revenue for the state and local economies. Finally, the use of trails for nonmotorized activities may provide health benefits, and potential reduced health care costs, by increasing the availability of various methods to exercise, and encouraging lifelong exercise that is a benefit to individuals as well as the entire state.

The special committee identified an urgent need for a consistent, dependable, and sufficient funding source for trail maintenance that relates to the transportation benefits of the nonmotorized trails. The committee identified the motor vehicle fuel tax revenues which are deposited in the transportation fund as an appropriate source of nonmotorized trail funding. Some of the use of nonmotorized trails may be a substitute for the use of gasoline or diesel-powered vehicles. By using motor vehicle tax revenues for trail maintenance, the trails can be improved and the advantages of the trails as a substitute for motor vehicle transport can be enhanced. In general, this funding mechanism will ensure the continued viability of nonmotorized trails in this state.

According to information provided to the special committee, the current costs of nonmotorized recreation and transportation-trail maintenance equals or exceeds the funding amount provided for in the bill and these costs will only climb with increased trail usage and with ongoing and future increased construction of trails.

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In addition to the need for trail maintenance, it is important that trails for nonmotorized uses be publicized, so that potential users can find the trails and trail access points, learn the facilities that are accessible from the trail, and plan activities on the nonmotorized trail. Thus, the bill includes a provision for education and public information about nonmotorized trails.

Additional information is contained in the NOTES to individual SECTIONS of the bill.

1           **SECTION 1.** 20.370 (5) (cz) of the statutes is created to read:

2           20.370 (5) (cz) *Recreation aids — nonmotorized trails.* As a continuing  
3 appropriation from the nonmotorized trail account in the conservation fund, an  
4 amount equal to the estimated nonmotorized trail transfer payment as estimated  
5 under s. 25.29 (1) (dr) for the nonmotorized trails maintenance and use program  
6 under s. 23.176.

NOTE: This appropriation authorizes DNR to expend funds for nonmotorized trail maintenance. The appropriation consists of segregated funds from the conservation fund and is a continuing appropriation, allowing DNR to retain and expend in future fiscal years any funds that are not expended in the current one. The amount appropriated per fiscal year is either \$10 million or 1% of the amount of the motor vehicle fuel tax collected in the prior fiscal year, whichever is less. See s. 25.29 (1) (dr), stats., created by this bill.

7           **SECTION 2.** 20.855 (4) (v) of the statutes is created to read:

8           20.855 (4) (v) *Transfer to conservation fund — nonmotorized trail formula.* On  
9 July 1 of each fiscal year, from the transportation fund, a sum sufficient in an amount  
10 as determined under s. 25.29 (1) (dr) to be paid into the nonmotorized trail account  
11 in the conservation fund.

NOTE: This appropriation transfers the amount to be deposited into the nonmotorized trail account from the transportation fund to the conservation fund on July 1 of each fiscal year.

12           **SECTION 3.** 23.176 of the statutes is created to read:

13           **23.176 Nonmotorized trails maintenance and use program. (1)**

14           DEFINITIONS. In this section:

15           (a) “Eligible recipient” means an entity that is listed in sub. (4) (b).

16           (b) “Local governmental unit” means a city, village, town, county, or special  
17 purpose district.

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1 (c) “Nonprofit organization for nonmotorized trails” means a nonprofit  
2 corporation, a charitable trust, or other nonprofit association whose purposes  
3 include the acquisition, ownership, development, or maintenance of, or other similar  
4 benefits for, nonmotorized trails and that is described in section 501 (c) (3) of the  
5 Internal Revenue Code and is exempt from federal income tax under section 501 (a)  
6 of the Internal Revenue Code.

7 (d) “State agency” has the meaning given in s. 23.175 (1) (b).

8 **(2) PROGRAM ESTABLISHED IN DEPARTMENT; RULES.** (a) There is established in the  
9 department a program to provide funding to maintain and enhance the use of  
10 nonmotorized trails throughout the state.

11 (b) The department, in consultation with any council created under s. 15.04 (1)  
12 (c) to advise the department regarding nonmotorized trails, shall promulgate rules  
13 to implement and administer the program.

14 **(3) TRAILS QUALIFIED FOR FUNDING.** (a) To be a nonmotorized trail that qualifies  
15 for funding under this section, the trail shall be all of the following:

16 1. Constructed, maintained, signed, and used primarily for activities that do  
17 not involve travel by means of a motorized vehicle.

18 2. A developed trail that, for the total distance that it runs parallel to an  
19 roadway improved for vehicular traffic, is not physically connected to the roadway  
20 for the majority of that total distance.

21 (b) The fact that a trail is open to use by snowmobiles or by motorized vehicles  
22 that enhance the accessibility of a trail for individuals with physical disabilities may  
23 not be used to disqualify a trail for funding under this section.

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1           **(4) ENTITIES ELIGIBLE FOR FUNDING.** (a) The department may use funding under  
2 this section for nonmotorized trails that are under the jurisdiction of the department  
3 or another state agency.

4           (b) The following entities shall be eligible recipients for funding under the  
5 program:

6           1. A nonprofit organization for nonmotorized trails that owns or has  
7 responsibility to maintain a nonmotorized trail.

8           2. An organization or volunteer group that has a formal agreement with a  
9 nonprofit organization for nonmotorized trails to maintain a nonmotorized trail  
10 owned by the nonprofit organization for nonmotorized trails.

11           3. A local governmental unit that has jurisdiction over a nonmotorized trail.

12           4. An organization or volunteer group that has a formal agreement with a local  
13 governmental unit to maintain a nonmotorized trail under the jurisdiction of the  
14 local governmental unit.

15           (c) Any nonmotorized trail for which funding is provided under this section  
16 shall be open to the public. In determining whether a nonmotorized trail for the use  
17 of which a fee is charged is open to the public, the department shall review the fee  
18 to determine whether the fee is reasonable. A fee is reasonable if it is not more than  
19 the corresponding fee established under s. 27.01 (8) (c) to use the state trail system,  
20 except that a higher fee may be determined to be reasonable if the specific use of the  
21 nonmotorized trail requires a higher level of maintenance.

22           **(5) TRAIL DESIGN AND MAINTENANCE STANDARDS; COORDINATION WITH TRAIL PLANS.**

23 The department shall prepare comprehensive statewide best practice standards  
24 relating to designing and maintaining nonmotorized trails. The standards shall  
25 include methods for construction of a nonmotorized trail so as to reduce overall

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1 maintenance costs for the trail and shall include methods to reduce adverse  
2 environmental effects of the trail. The department shall coordinate the standards  
3 with the standards contained in any plans prepared for the state trail system and  
4 with any relevant plans prepared for local trails. The department shall develop the  
5 standards under this subsection as soon as possible after the effective date of this  
6 subsection .... [LRB inserts date], and shall revise the standards periodically, as  
7 necessary, to address issues that arise and that relate to the maintenance and use  
8 of nonmotorized trails.

9 **(6) PRIORITY SYSTEM FOR MAINTENANCE ACTIVITIES.** (a) The department shall  
10 evaluate on a statewide basis the maintenance needs for all nonmotorized trails that  
11 are eligible for funding under this section and shall establish a priority system for  
12 the allocation of funding for maintenance under this section, based on the type of  
13 maintenance necessary and the urgency of the maintenance, and the type of trail  
14 involved.

15 (b) In developing the priority system under par. (a), the department shall  
16 consider the types of nonmotorized trails listed in this paragraph, as well as any  
17 other nonmotorized trails that have critical and substantial maintenance needs. The  
18 department is not required to use the order of the subdivisions in this paragraph in  
19 developing its priority list. The priority list shall include all of the following:

20 1. Connecting trails.

21 2. Trails with substantial commuter potential, such as those near population  
22 centers, those located in or near neighborhoods with access to trails, and those  
23 located along highways that lead to workplaces.

24 3. Trails that are near to tourist activities.

25 4. Trails with substantial existing use and expected increase in use.

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- 1           5. Longer trail segments.
- 2           6. Trails that allow for more than one nonmotorized trail use on the same trail.
- 3           7. Water trails.
- 4           8. Equestrian trails.
- 5           9. Long–distance hiking trails.
- 6           10. Recreational trails that are part of a larger park or green space.
- 7           11. Cross–country ski trails.

8           (c) In developing the priority system under par. (a), the department shall  
9 consider the maintenance needs for nonmotorized trails listed in this paragraph, as  
10 well as any other related maintenance issues. The department is not required to use  
11 the order of the subdivisions in this paragraph in developing its priority list. The  
12 priority list shall include all of the following:

- 13           1. Routine maintenance of trails, including the trail surface and the facilities  
14 associated with the trail.
- 15           2. Maintenance, which may include reconstruction, that will improve user  
16 experience and safety or that will allow subsequent maintenance to be deferred.
- 17           3. Maintenance needed due to damage caused by use of the trail by  
18 unauthorized trail users.
- 19           4. Maintenance needed due to damage caused by erosion or by other natural  
20 causes.
- 21           5. Maintenance of facilities, including those located at trailheads.
- 22           6. Maintenance, which may include reconstruction, that is necessary due to the  
23 changing uses of trails.
- 24           7. Maintenance of trails that have multiseason uses, including snow removal  
25 for trails that serve commuters.

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1           8. Maintenance that conforms with the standards prepared under sub. (5).

2           **(7) PRIORITY SYSTEM FOR USE ENHANCEMENT ACTIVITIES.** (a) The department shall  
3 evaluate on a statewide basis the need for facilities associated with nonmotorized  
4 trails that are eligible for funding under this section and the methods available for  
5 assisting individual trail users, and shall establish a priority system for the  
6 allocation of funding for enhancement use under this section.

7           (b) In developing the priority system under par. (a), the department shall  
8 consider the trail use issues relating to nonmotorized trails that are listed in this  
9 paragraph, as well as any other trail use issues. The department is not required to  
10 use the order of the subdivisions in this paragraph in developing its priority list. The  
11 priority list shall include:

12           1. Making trails and trail facilities accessible.

13           2. Providing for cross-country ski trail grooming.

14           3. Modifying bicycle trail surfacing to make it more appropriate for the type of  
15 bicycling on that trail.

16           4. Providing parking for trail users.

17           5. Providing information to trail users by conducting, and publishing the  
18 results of, research on trail usage and by providing maps, pamphlets, information on  
19 the Internet, directional signs, and informational signs.

20           6. Conducting educational and promotional activities regarding trail use, such  
21 as promoting a “bike to work week” and informing the public regarding issues of  
22 safety and courtesy and regarding the location of trails and trail facilities and the  
23 hours that they are open.

24           7. Enhancing water trails, including construction and maintenance of  
25 portages, primitive campsites, and directional signs.

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1           8. Modifications to trails to allow for multiple uses.

2           **(8) USE OF FUNDING.** (a) In administrating the program established under this  
3 section, the department shall determine:

4           1. The amount of funding to be allocated between maintenance activities and  
5 use enhancement.

6           2. The amount of funding to be provided to eligible recipients.

7           3. The amount of required cost sharing, and the circumstances in which  
8 funding may be provided without a cost-share requirement being imposed on an  
9 eligible recipient.

10          4. The maximum funding available to the department for state trails under its  
11 jurisdiction in any fiscal year.

12          5. The terms and conditions for receipt of funding by an eligible recipient under  
13 this section.

14          6. A methodology under the program for assuring a reasonable year-to-year  
15 consistency in the amounts provided to eligible recipients, if the department finds  
16 that such consistency is appropriate.

17          7. The timing and frequency of funding payments.

18          8. The extent to which eligible recipients must conform their maintenance  
19 activities with the standards prepared under sub. (5).

20          9. The conditions applicable to an organization or a volunteer group that  
21 receives funding as an eligible recipient under sub. (4) (b) 3. or 5.

22          (b) Funding under the program may not include costs or reimbursement for  
23 any of the following:

24           1. Equipment.

25           2. Law enforcement activities on a trail.

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1           3. Administrative or other overhead costs, except as specifically allowed by the  
2 department as part of the eligible recipient's cost-sharing.

3           (c) The department may not provide funding to an eligible recipient under this  
4 section unless the eligible recipient agrees to spend for maintenance of nonmotorized  
5 trails, in the fiscal year in which the eligible recipient receives the funding, an  
6 amount that is at least equal to the average amount that the eligible recipient spent  
7 from other funding sources on maintenance of nonmotorized trails in the previous  
8 2 fiscal years.

9           (d) The department shall prepare an annual report summarizing the  
10 distribution of funding to eligible recipients under the program and shall submit the  
11 report the chief clerk of each house of the legislature for distribution to the  
12 legislature under s. 13.172 (2).

NOTE: Creates the nonmotorized trails maintenance and use program in DNR. Funding for this program is from the conservation fund, consisting of moneys transferred from the transportation fund. The funding for each fiscal year is \$10 million or 1% of the motor vehicle fuel tax collections each fiscal year, whichever is less.

DNR is directed to implement the program by promulgating rules necessary for the program and for distributing the funds for trail maintenance and use. The funds are distributed directly to state agencies and to local governmental units and to nonprofit organizations for nonmotorized trails. The bill establishes a basic structure that focuses primarily on the priorities for expenditure of trail maintenance and use funds.

Funding under the nonmotorized trail program is available to, among others, "local governmental units", which is defined in the bill as a city, village, town, county or a special purpose district. "Special purpose district" does not have a specific defined content, but includes such entities as lake districts, sewer and water districts, school districts, technical college districts, and drainage districts. To the extent that these special purpose districts own and maintain trails, they will be eligible for funding under the program.

The extensive lists of priorities and issues in the program are intended to give a sense of the urgency and necessity of a nonmotorized trail maintenance and use program to ensure the continued viability of the nonmotorized trails in this state. However, the program is open-ended and allows DNR to identify additional priorities and issues related to maintenance and use of nonmotorized trails, and to incorporate them into the program.

13           **SECTION 4.** 25.29 (1) (dr) of the statutes is created to read:

14           25.29 (1) (dr) For fiscal year 2009–10 and for each fiscal year thereafter, an  
15 amount equal to the nonmotorized trail transfer payment. The nonmotorized trail

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1 transfer payment is equal to one percent of the amount of the motor vehicle fuel tax  
2 collected under s. 78.01 for the prior fiscal year, or \$10,000,000, whichever is less.

NOTE: Provides that the conservation fund includes the moneys transferred from the transportation fund for the trail maintenance and use program. See the NOTES to ss. 20.370 (5) (cz) and 20.855 (4) (v), stats., created by this bill.

3 **SECTION 5.** 25.29 (1r) of the statutes is created to read:

4 **25.29 (1r)** There is established in the conservation fund a separate account that  
5 is designated the nonmotorized trail account, that consists of the moneys paid into  
6 the conservation fund under s. 20.855 (4) (v). No moneys that are deposited in the  
7 nonmotorized trail account in the conservation fund may be transferred from the  
8 nonmotorized trail account to any other fund or appropriation account in any other  
9 fund.

NOTE: Section 25.29 (1r):

1. Creates a separate account within the conservation fund which is designated the nonmotorized trail account. This account consists of the moneys for trail maintenance and use from the transportation fund.

2. Specifies that no moneys that are deposited in the separate nonmotorized trail account may be transferred from this separate account to any other fund or appropriation account in any other fund.

10 **SECTION 6.** 25.40 (3) (b) 17. of the statutes is created to read:

11 **25.40 (3) (b) 17.** Transfers to the nonmotorized trail account in the conservation  
12 fund.

NOTE: This provision provides an exemption from the restriction on transferring funds from the transportation fund to any other appropriation or fund.

13 **SECTION 7.** 227.01 (13) (zzb) of the statutes is created to read:

14 **227.01 (13) (zzb)** Relates to nonmotorized trail design and maintenance  
15 standards under s. 23.176 (5).

NOTE: Provides that DNR is not required to promulgate nonmotorized trail design and maintenance standards as administrative rules.

16 **SECTION 8. Nonstatutory provisions.**

