



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 4

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

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

RE: Issues for Discussion by Members Regarding Creation of a Non-Motorized Trail Council

DATE: November 21, 2008

INTRODUCTION

This Memo was prepared for the Joint Legislative Council's Special Committee on Enhancing Recreational Trails for Non-Motorized Use. The Memo sets forth background information and options relating to the committee's discussion of legislation to create a nonmotorized trail council to advise the Department of Natural Resources (DNR).

BACKGROUND INFORMATION ON COUNCILS IN STATE GOVERNMENT

The executive branch of state government consists of a number of large-scale administrative entities (departments and independent agencies), such as the DNR or the Wisconsin Historical Society (an independent agency), which are created by statute in ch. 15, Stats. The goal of executive branch organization is to integrate individual departments or independent agencies by function, so that programs can be coordinated as much within the agencies as possible. The Legislature has created a variety of other smaller-scale executive branch entities (i.e. boards, commissions, committees, and councils) and has defined the scope of their responsibilities and procedures.

A "council" is defined in the statutes as "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...." [s. 15.01 (4), Stats.]

The other executive branch entities are defined as follows:

- A board is a part-time body that functions as the policy-making unit for a department or an independent agency (e.g. the Natural Resources Board).

- A commission is a three-member governing body in charge of a department or independent agency.
- A committee is a part-time body appointed to study a specific problem and recommend a solution or policy alternative that is intended to terminate at the end of its assignment.

In the current statutes, the Legislature has created 68 councils. These councils are created in 15 state agencies; four state agencies have no councils. In addition to these statutory councils, the heads of departments or independent agencies are authorized by statute to create any additional advisory bodies, including councils, as needed in the operation of the agency. [s. 15.04 (a), Stats.]

There are two types of councils under the statutes. The first type of council functions entirely within the department or independent agency to which it is attached. The responsibility of the head of the department or agency includes not only budgeting and program coordination for the council, but also any issue regarding the exercise of the council's powers, duties, and functions. The second type of council is one that is attached to a department or independent agency under s. 15.03, Stats. (for limited purposes). These councils are independent of the department or agency and function independently of the head of the department or agency, although budgeting, program coordination, and management functions are performed by the department or agency to which the council is attached. The so-called "15.03" attachment is primarily done when the scope of the council's assignment is substantially larger than the programs contained within a single department or agency.

STATUTORY PROCEDURES APPLICABLE GENERALLY TO COUNCILS

Section 15.09, Stats., contains a variety of provisions generally applicable to councils, unless contrary provisions are provided elsewhere in the statutes. A copy of s. 15.09, Stats., is enclosed with this Memo. The statute includes the following key provisions regarding councils:

- The Governor appoints members of councils.
- Councils must meet at least annually and meet at the call of the head of the department or independent agency.
- At the first meeting of each year, each council elects a chairperson, vice-chairperson, and secretary.
- A majority of members of a council is a quorum and a majority of a quorum is required to act in any matter.
- Council members are compensated for their expenses, but are not compensated for their services.
- Each council must prepare and submit an annual report to the head of the department or agency.

POTENTIAL OPTIONS FOR CREATING A NON-MOTORIZED TRAIL COUNCIL BY STATUTE IN DNR

At a minimum, the statute must create the council within DNR, give it a name, and state its responsibilities. Additional provisions may be included in the statute to specify numbers and qualifications of members, the appointing authority for council members, and any other provisions that are more appropriate or desirable than the basic statutory provisions. The statute may be as detailed as the Legislature sees fit, although most of the statutes that create councils are relatively simple. The following are some alternatives for consideration by the Special Committee.

Creation of the Council

- Should the council be located in DNR? Or another department?
- What should be the name of the council?
- What should be the statutory responsibilities of the council? What duties should DNR have with respect to the council (e.g., to consult the council regarding specified matters)?
- Should the council's stated responsibilities be brief or extensive?

Appointments to the Council

- How many members should be appointed to the council? Should the number of members be left to the appointing authority?
- Who should make appointments to the Council? The Governor? The secretary of natural resources? Other agency heads?
- Should a member of the council be allowed to select a designee to attend meetings and to vote in lieu of the member?
- Should council members have specific qualifications, such as having been a holder of a trail pass for a certain number of years?
- Should geographic diversity among members be required, such as requiring a certain number of members from north of Stevens Point or north of a certain highway that crosses the state?

Qualifications of Members

A statute creating a council may specify the number of members, but is not required to specify the qualifications or the entities represented by those members. A general statement such as requiring appointment of members with an interest in nonmotorized trails would be sufficient for the purpose of establishing the council. However, the Special Committee may wish to consider specifying the qualifications or representation of members, as follows:

- Members appointed to the council from a list of individuals recommended by certain organizations (e.g., a representative of local government recommended by organizations of local governments).
- Members to include agency heads from agencies with functions related to trails. Should agency heads be designated as nonvoting members?
- Members of certain organizations, either generally related to the functions of the council (i.e., members of organizations that are interested in cross-country skiing) or members of specific, named organizations.
- Legislators.
- Individuals representing local governmental units or organizations representing local government.
- Disabled individuals.
- Members with specified interests in land (e.g., private forestry or nonprofit conservation organizations).
- Members representing personal interests in specific kinds of nonmotorized trail uses, including any of the following: walking, running, hiking, backpacking, in-line skating, bicycle riding, cross-country skiing (either classic or skating), dog sledding, skiing, canoeing, kayaking, hunting, rafting, bird watching, angling, trapping, gathering products of nature, nature studying, sleigh riding, and skjoring.

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Enclosures