

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4602/1dn
ISR:jlg:km

February 23, 2000

Senator Shibilski:

The provisions in this bill that require new rates specified by the independent actuarial firm to be retroactive to July 1, 1999, and that allow one party to unilaterally cancel a contract may be subject to a court challenge on the grounds that they both violate the Contracts Clauses of the United State Constitution and the Wisconsin Constitution. The Contracts Clause prohibits the state from passing any law that substantially impairs an existing contractual obligation. For example, in this case, the provision that applies the rates specified by an independent firm retroactively to July 1, 1999, could be viewed as impairing the contractual obligations of the parties because the provision modifies the original contractual rights of the parties (the right of DHFS to pay the rates specified in the original contract and the right of an HMO to receive the rates specified in the original contract). If a court were to find that this impairment is substantial, the provision may violate the Contracts Clause.

If you have any questions or would like to discuss a redraft of this bill to eliminate the Contracts Clause issues, please feel free to contact me.

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