

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2317/P1dn
ARG:kmg:pg

April 10, 2003

ATTN: Tom Van Ess and Joyce Kiel

The attached preliminary draft revises the requirements for operation of school buses under s. 343.12 and school vans and temporary school vehicles under s. 121.155. I have attempted in the draft to create a similarity between the requirements under ss. 121.155 and 343.12 and the requirements created in 2003 SB-3 for human service vehicle operators. Because ss. 121.155 and 343.12 have their own existing statutory structure and language, I could not incorporate "wholesale" the language of SB-3 into these statutes; I have had to make adjustments to fit the existing statutory structure and language and have also tried to simplify where possible. I have further been assisted by Attorney Peter Grant, who drafts in the area of K-12 education, including ch. 121. Please review the attached draft carefully to ensure that it is consistent with your intent.

The attached draft includes all disqualifying offenses under s. 343.12 (2) (d) and (e), plus additional offenses, and provides that DOT may establish longer disqualification periods for these offenses under a "rule-making" provision. The existing provisions of s. 343.12 (2) (d) (containing the 2-year disqualification period) are deceptively complex, as there are essentially three "layers" of disqualifying offenses embedded in the provision (s. 343.12 (2) (e) incorporates other provisions which in turn incorporate other provisions). All of the offenses specified in s. 343.12 (7) (a) of the attached draft (the "at least 2 years" provision) are included in the "layers" of s. 343.12 (2) (d) except that I have added the offense specified in s. 343.12 (7) (a) 11. (taken from SB-3) and I moved the offense specified in s. 343.12 (7) (c) 27. (any felony in the commission of which a motor vehicle is used, which is taken from the "layers" of s. 343.12 (2) (d) and put it under the "at least 5 years" provision of s. 343.12 (7) (c). (Existing law seems somewhat inconsistent in including "felonies in the commission of which a motor vehicle is used" and other felony offenses in the "layers" under the two-year provision of s. 343.12 (2) (d) rather than in the five-year provision of s. 343.12 (2) (e) that specifically refers to felonies.) You may want to move other offenses to the "at least 5 years" provision under s. 343.12 (7) (c) which, in the attached draft, basically tracks existing s. 343.12 (2) (e) and proposed s. 85.21 (3m) (b) 3. of SB-3. You may also want to remove s. 343.12 (7) (a) 13. because the general penalty for failing to meet financial responsibility requirements is operating privilege suspension, and operating while suspended under s. 343.44 (1) is already included in the list. I created s. 343.12 (7) (b)

because revocation under s. 343.305 (10) is included in one of the “layers” under s. 343.12 (2) (d). Also, operating a motor vehicle while disqualified under 49 CFR 383.51, incorporated “third layer” into s. 343.12 (2) (d) by means of s. 343.307 (2), is already subsumed under s. 343.44 (1) (d). With regard to the “at least 5 years” provision of s. 343.12 (7) (c), I added the references to ss. 948.075 (enacted last session) and 948.095.

With regard to DOT fingerprinting, the attached draft imposes the same confidentiality requirements for these fingerprints that currently apply for DOT photographs. The draft also requires school districts, private schools, and school bus contractors to keep fingerprints confidential except for purposes of submitting them to the FBI (through the DOJ) for a record check. Is this consistent with your intent? I also note that the draft does not require the report specified in s. 343.237 (9) to include any information related to fingerprints of applicants for a school bus endorsement. Is this okay?

The draft requires DOT to keep records of its background checks on applicants for school bus endorsements, but does not specify whether these records would be publicly available. Under existing law, DOT generally must make abstracts of operating records available to the public, but need not (and in many cases cannot) make all of its records publicly available. Under the federal Drivers Privacy Protection Act, 18 USC 2721, a state department of motor vehicles such as DOT may not disclose specified personal information. The act allows disclosure of information relating to a person’s driving record, including accident and driving violation history. The act does not specifically address disclosure of a criminal history unrelated to the operation of a motor vehicle. The act also contains a “public safety” exception for disclosure of “personal information” but not for disclosure of “highly restricted personal information.” The attached draft requires DOT to maintain records but leaves it within DOT’s discretion to determine how to treat these records and, in particular, whether they would be publicly available. Is this consistent with your intent?

Under s. 343.12 (4) (a) 3., a resident of Iowa, Illinois, Michigan, or Minnesota may operate a school bus in Wisconsin without meeting any of the requirements that would be imposed under this bill. However, DOT has the discretion to, by rule, require these nonresidents to meet any requirements applicable for residents (s. 343.12 (4) (b)). Do you want the bill to include any treatment of these provisions?

Under the bill, the fee for each DOJ criminal history search requested by DOT or (I believe) a school district would be \$5, and the fee for a criminal history search requested by a private school or school bus contractor would be \$13. *See* s. 165.82 (1). The statutes appear to provide a direct link up to the DOT database by DRL and DHFS (under s. 165.825), but I am uncertain of the implications of the linkup procedure. You may want to assess the interest in and the cost-effectiveness of a DOT linkup to the DOJ criminal history system. If this is an option to be pursued, s. 165.825 may have to be amended.

The attached draft provides no right of review of a DOT rehabilitation determination because of the expense involved in providing such a review procedure. (This is in contrast to the provisions of 2001 SB-258, which provided a review procedure.) It is

possible that a court challenge might be attempted under the due process clause based upon lack of review of a DOT rehabilitation determination.

In SB-3, the state is prohibited from making payments to a county operating a specialized transportation service (STS) that violates the requirements of the bill or to a county that contracts with an STS that violates the requirements of the bill. The bill also prohibits certain contracts with past violators. See proposed s. 85.21 (3) (c) and (3m) of SB-3. The attached draft does not create similar provisions affecting the contracts between school districts and school bus contractors (although there may be provisions of existing law allowing reduction of school aids for violations). Is this consistent with your intent?

The imposition of forfeiture penalties against violating school districts and private schools in the attached draft is quite unusual. Do you want to retain these provisions?

Under current law, the administration and enforcement of chapter 121 is generally within the scope of DPI's responsibilities. However, I am uncertain whether DPI has the resources available to effectively monitor and enforce the provisions of this draft. (Because of this, and because DOT must already make such determinations for school bus drivers, the attached draft provides for DOT, not DPI, to make the rehabilitation determination with respect to school van and temporary school vehicle rehabilitation determinations.) Do you want to include in the attached draft any funding mechanism or enforcement provisions for DPI? Do you want to include any additional funding for DOT?

As indicated above, the attached draft includes certain language changes and changes in structure to better fit the existing provisions of ss. 121.155 and 343.12. It also deviates slightly from the penalty provisions included in SB-3.

As we discussed, I recommend that DOT review the attached draft. I also recommend review by DPI.

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