

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3278/1dn
ARG:lmk:rs

July 7, 2005

ATTN: John Flynn

In addition to the underlying draft of LRB-2511, you also provided me with a copy of the drafter's note to LRB-2511, which I assume you have reviewed. As I stated in that drafter's note, the subject matter of this draft is very complicated and would probably have been appropriate for a Joint Legislative Council study committee similar to the Town Roads study committee last session. I have not received any feedback from the industry with regard to LRB-2511, but I do know that OCR and DOT have a laundry list of issues with the draft. If you would like to discuss those issues further, the appropriate contacts are Attorney Doug Wood at OCR and Attorney Jim Thiel at DOT.

The attached draft (like LRB-2511) repeals many provisions that could potentially be found to be preempted by federal law. As discussed in the drafter's note to LRB-2511 and the analysis of the bill, the question of preemption is not undertaken by courts in a sweeping manner but rather in a narrow, case-by-case examination. Very few of the provisions repealed by the attached draft have *actually* been found by a court with jurisdiction that includes Wisconsin to be preempted. Your redrafting instructions direct the removal from the draft of one of the few provisions of Wisconsin law that have actually been found to be generally preempted. Please see the discussion of *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999) in the drafter's note to LRB-2511. See also 2005 AB-287.

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