DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0945/P1dn
ARG:cjs:jf

September 26, 2005

ATTN: Representative Townsend

Please review the attached draft carefully to ensure that it is consistent with your intent.

With respect to the repeal of s. 192.32 (1) (c) in the attached draft, I believe s. 192.32 (1) (a) would continue to allow a pedestrian to utilize an authorized crossing on a public highway. However, to the extent that authorized pedestrian crossings exist that are not on public highways, the repeal of s. 192.32 (1) (c) leaves no exception for use of such crossings.

The attached amendment does not repeal ss. 195.04 to 195.043. The hearing procedures in these provisions are incorporated into other statutes, such as ss. 192.34, 195.08 (9), 195.28 (1), 195.285 (1), 195.29 (1) and (5), 195.31, 195.32, and 195.37 (1), all of which remain viable under AB−588. The attached amendment eliminates DOT's investigative involvement under ss. 195.04 to 195.043, while retaining OCR's authority to continue to conduct such hearings as to water carriers. If you would prefer to entirely eliminate OCR's authority to conduct hearings as provided under s. 195.04 to 195.043, I could revise ss. 195.04 to 195.043 to apply only to proceedings under ss. 192.34, 195.08 (9), 195.28 (1), 195.285 (1), 195.29 (1) and (5), 195.31, 195.32, and 195.37 (1).

The attached amendment eliminates DOT's investigative role under s. 195.08 (9), in the same manner that DOT's investigative role is eliminated under ss. 195.04, 195.37 (1), and 195.38. Is this consistent with your intent?

Under s. 192.327 (6), DOT must assist OCR in inspecting motor vehicles provided by railroads that are used to transport workers. Do you want to retain this requirement?

I believe AB−588, with the attached amendment, eliminates all statutory provisions, except those under s. 192.327 (6), providing for a DOT investigation at OCR's direction. Accordingly, the attached amendment eliminates the reference to DOT on p. 40, line 25 of AB−588. Is this OK? Also, the attached amendment does not eliminate the reference to DOT on p. 40, line 3, of AB−588. Do you want this reference eliminated as well?

I have retained the phrase "to the extent consistent with federal law" in amended s. 195.26 (and similar phrases in ss. 195.27, and 195.34), as I believe this is the appropriate phrase.

With regard to amended s. 192.29 (3) (a), the term "federal law" includes both federal statutes and federal regulations. I believe the treatment of s. 192.29 (3) (a) appearing in AB−588 would incorporate any "quiet zone" provisions of the federal regulations and would work as is. However, I have made changes to this provision in the attached amendment to make the provision clearer. Are these changes in the attached amendment consistent with your intent? Also, I wonder if it is even necessary to retain s. 192.29 (3) (a), as the treatment in the attached amendment simply repeats federal law. The treatment of s. 192.29 (3) (a) in the attached amendment also removes "within any city or village"; a corresponding treatment of s. 192.29 (3) (b) is therefore necessary. Is the change to s. 192.29 (3) (b) in the attached amendment consistent with your intent?

I don't believe the initial applicability provision needs to be modified to apply to water carriers. For the most part, the statutory treatment in AB−588 related to water carriers is intended to maintain the status quo as to water carriers, not make substantive modifications as are made for railroads.

With respect to removing the repeal of s. 192.29 (2), as discussed in our meeting, some modification must be made because AB−588 repeals the proceeding under s. 192.29 (1). Accordingly, I have renumbered s. 192.29 (2) to s. 195.28 (1m). I do not believe s. 195.28 (2) or (3) should be amended to cross−reference s. 195.28 (1m); please advise if you disagree. In addition, to address the concern that this change not affect existing stop signs, I have added a "global" nonstatutory provision. Is this nonstatutory provision consistent with your intent?

I have included in the attached amendment the suggestion of DOT to eliminate specific definitions of "rail carrier" and "transportation" in s. 191.001 and to instead incorporate these definitions into amended s. 191.01 (1). This change does not have a substantive impact on the bill.

The attached amendment does not add a definition of "highway" in s. 195.001. As discussed in our meeting, doing so may create unintended consequences and it is unclear if there is any benefit to adding the definition proposed by OCR. There is currently a statutory definition of "highway" that applies to ch. 195: "'Highway' includes all public ways and thoroughfares and all bridges upon the same." See s. 990.01 (12). The memo from OCR refers to its own definition of "highway," in OCR's administrative rules. OCR's definition is as follows: "'Highway' includes all public ways and thoroughfares and all bridges on the same, whether used by motorized vehicles or not, but does not include snowmobile trails." Wis. Adm. Code, RR 1.001(2). I don't believe that OCR's definition adds anything to the existing applicable definition, and to the extent OCR reads its definition as applying to recreational trails, I believe that the language is ambiguous at best. My concern is both that adding an expansive definition in s. 195.001 may broaden the scope of certain provisions in ch. 195 in an unintended way and that the definition proposed is not suited to achieve the proposed result. For example, to the extent OCR desires to make the term "highway" include a recreational trail, is the intent that advance warning signs be required for recreational trail−railroad crossings as provided in s. 195.286 (3)? I believe a more focused approach would work better − to either add the term "recreational trail" (or

another suitable term, see below) at the desired locations in ch. 195 or to define "highway" to specifically include recreational trails only in those statutory sections where this is specifically desired. Moreover, I think any statutory treatment should clearly identify those recreational trails to which it is intended to apply. Would recreational trails include hiking trails, bicycle trails, equestrian/bridle trails, all−terrain vehicle (ATV) trails (see s. 23.33 (1) (d)), the system of designated state trails under the jurisdiction of DNR (see s. 23.175), and trails under local jurisdiction? Should "recreational trail" be defined by type of use (see, for example, s. 84.06 (11)) or by a functional definition similar to s. 30.40 (12m)? Under current law, the term "highway," whether defined under s. 990.01 (12) (as applicable to chs. 82 to 86 and chs. 189 to 192 and 195) or under s. 340.01 (22) (as applicable to chs. 341 to 349 and 351, as well as s. 23.33) generally would not include public trails dedicated to use by "off−road" ATVs and snowmobiles, which trails generally fall under the jurisdiction of DNR rather than DOT. (See, for example, ss. 23.33 (4) and 350.01 (17), which contemplate that ATV trails and snowmobile trails are generally not "highways.") With respect to bicycle trails (also referred to in the statutes as bike routes, bikeways, bicycle ways, and bicycle paths), the statutes require some interpretation as to when these may be "highways," but suggest that such bicycle trails are generally not highways as contemplated in ch. 195. Under current law, certain "state trails," including bicycle trails, may be incorporated into the highway right−of−way, which may include facilities for safe crossing. See s. 84.06 (11). See also s. 346.16 (2) (b). Under s. 84.60, a "bikeway" may be incorporated into an existing highway (specifically defined in this statute) or constructed separately. Section 84.60 (3) provides that such a "bikeway" is considered a "highway" only for certain purposes, which do not include ch. 195. Under current law, "rules of the road" are generally applicable to bicycles operated on highways. See s. 346.02 (4). Yet, s. 346.803 contains special rules of the road for bicycles operated on a bicycle way. Also, under current law, DOT adopts a Manual on Uniform Traffic Control Devices (MUTCD) for highways and a similar manual for bicycles "on highways ... and bikeways." See s. 84.02 (4) (e) and (f). Reading all of these statutes together, I believe that bicycle trails are generally not considered "highways" except as they may be incorporated into a highway or intersect (cross) a highway. To the extent that you wish to incorporate changes into ch. 195 to specify OCR jurisdiction over "recreational trail" crossings, I will need some assistance fleshing out the details of the intended changes. Also, perhaps a narrower approach could be taken by referring only to state trail crossing facilities provided under s. 84.06 (11).

Please let me know if you would like any changes made to the attached amendment or if you have any questions. If the attached amendment meets with your approval, let me know and I will convert it to an introducible "/1" draft.

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