

2005 DRAFTING REQUEST

Assembly Amendment (AA-AB588)

Received: 09/06/2005

Received By: agary

Wanted: Soon

Identical to LRB:

For: John Townsend (608) 266-3156

By/Representing:

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Transportation - railroads

Extra Copies: PJH

Submit via email: YES

Requester's email: Rep.Townsend@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

various changes to railroad statute modernization

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 09/13/2005	csicilia 09/23/2005	jfrantze 09/26/2005	_____	sbasford 09/26/2005		
	agary 11/04/2005	csicilia 11/16/2005		_____			
/1			jfrantze 11/16/2005	_____	lnorthro 11/16/2005	lnorthro 11/16/2005	

FE Sent For:

2005 DRAFTING REQUEST

Assembly Amendment (AA-AB588)

Received: **09/06/2005**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **John Townsend (608) 266-3156**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Rep.Townsend@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

various changes to railroad statute modernization

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 09/13/2005	csicilia 09/23/2005	jfrantze 09/26/2005	_____	sbasford 09/26/2005		

FE Sent For:

*1 cjs 11/16
05*

<END>

<END>

2005 DRAFTING REQUEST

Assembly Amendment (AA-AB588)

Received: 09/06/2005

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **John Townsend (608) 266-3156**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - railroads**

Extra Copies: **PJH**

Submit via email: **YES**

Requester's email: **Rep.Townsend@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

various changes to railroad statute modernization

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary	/P1 gjs 9/23 05	ag/23	ag/Kz 9/23			

FE Sent For:

<END>

Amendments to AB-588

Remove creation of 189.02(2m) [Section 10] relating to adding language for Federal inspection programs... Also remove last sentence of 195.27 [Section 97] and remove 195.28(5) Section 98. [Eliminate any other changes that would reference creation of Federal Track inspection program]

Add repeal of 189.02 (5) & (6)

Create (s. 195.001)? to clarify that recreational trails are included in the definition of 'highways' except for snowmobile trails. [From Doug Wood... "We currently define 'highways' in this manner and have been sustained in court"]

192.29(3)(a)... Strike "Municipal Authority" in title, and strike "within any city or village". Check with Doug Wood to make sure this language is adequate for new train horn/Quiet Zone FRA rules.

Remove change to 192.29(5)... We are assuming that the change comes via AB-512, which should be passed before 588.

192.292 regarding blocked crossings should NOT be repealed. Remove this section.

Repeal 192.295 SHOULD be repealed. This comes under Federal jurisdiction. No state penalty.

Section 101... 195.31 should NOT be repealed.

Section 102....195.34... strike the word 'monthly'.

Add repeal of 192.32(1)(c) [pedestrian trespassers]

Repeal 192.71 & 192.72

Remove 192.29(2) [Stop signs on crossbucks] from list of repeals.

Section 44.... 192.55(6) Trespassing penalties. Should be \$100 to \$200.

Page 22, line 13... maybe insert the word 'freight' after transporting?

The Department recommends repeal of 195.04... .041... .042.... .043 and no creation of 195.04(1m), or else leave the department out of it. WisDOT has no staff for investigations, and has no recent knowledge of using this. You may check with DOT legal on this.

Also, remove 'the department' from 195.37(1)

And, p. 39, line 12... again, delete the dept.

Section 122... Initial applicability for Water carries, too?

Also, the Bill includes two different phrases relating to Federal preemption: In some places: "Not contrary to or inconsistent with" various federal statutes and regulations is used. In other places "To the extent consistent with Federal Law". The OCR and DOT would prefer the same phrase used throughout. OCR would prefer "Not contrary to or inconsistent with" federal law or regulation.

8/30

22-W

Meeting w/ Rep. Townsend, Sam Gratz, & Kevin Soucie

- Ron Adams - director of rail bureau

- delete authority for all inspection training, not just the track
 - feds inspect the track & RRs do it

- def. : recreational trails — check w/ Doug
- horn : check w/ Doug

\$100 - \$200 → for most offences,
not just 192.55(6)

- can ask Ron Adams

192.32(1)(c) → check w/ DOT legal →

- def. of crossing

- modify ?

- maybe amend intro to include authorized or designated crossings

~~want to make sure~~

- don't want to have to take down existing stop signs

- maybe init. app. / non-stat.

- don't want to undo stop signs

- ~~████~~ → 195.04 : can we delete the whole provision? or just remove the dept.?

- double check w/ DOT legal

- one simple amendment →

- Minette
- Sam

Gary, Aaron

From: Sam Gratz [samgratz@tds.net]
Sent: Tuesday, September 13, 2005 9:32 AM
To: Gary, Aaron
Cc: Lawrence, Minette
Subject: Re: AB-588 amendment

These would be my suggestions:

1. In 192.29 (3) (b), can the local reference be removed as well? As perhaps "... shall be installed upon such public traveled grade crossings-----as----- the Office and the railroad company may by agreement decide;...." [There is really no need for a difference between how this is handled in a municipal vs. a rural setting.]
2. I would suggest the option of foregoing a change and referencing as you choose in a drafter's note. I believe you mentioned that this may be more problematic that Doug Wood saw it. He is still able to later state his case, and offer a different solution at a later time.

I appreciate your work on this. I will be traveling the rest of this week, but I will have my laptop along, and expect to be online perhaps Wed. Thurs. and Friday in the afternoon a bit.

Also, my cell phone may offer service at 608-345-6394.

----- Original Message -----

From: Gary, Aaron
To: samgratz@tds.net
Cc: Lawrence, Minette
Sent: Tuesday, September 13, 2005 9:11 AM
Subject: AB-588 amendment

Sam,

I have mostly finished preparing this amendment, but have a couple of questions.

1. Relating to s. 192.29 on pp. 17-18 of AB-588, the bill amends s. 192.29 (3) (a) but does not affect s. 192.29 (3) (b). The "municipal authority" title would still apply to the text of s. 192.29 (3) (b). More importantly, what changes do you want made to s. 192.29 (3) (b)? If "city or village" is stricken from s. 192.29 (3) (a), some change will need to be made to the corresponding language in s. 192.29 (3) (b)?
2. The amendment at this point 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 such a definition. 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. My concern with adding an expansive definition in s. 195.001 is creating unintended consequences. 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 to be posted before every recreational trail-railroad crossing in s. 195.286 (3)? If you want to pursue this issue, I believe a more focused approach would work better - to either add the term "recreational trail" (or a similar term) at the desired locations in ch. 195 or to define "highway" to specifically include recreational trails only in those statutory sections where it is specifically desired. Do you want me to contact Doug Wood at this time regarding the "highway" definition issue OR add the foregoing note to the drafter's note and let him consider it later OR do something else?

The amendment is prepared as a preliminary draft, with a drafter's note addressing minor issues.

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

OFFICE OF THE COMMISSIONER OF RAILROADS

MEMORANDUM

To: Rodney W. Kreunen
CC: Tom Running, David Meier

From: Douglas S. Wood

Date: June 28, 2005

Subject: Draft Proposed Extensive Revisions to Railroad Statutes

At the request of Sen. Kanavas, the Legislative Reference Bureau (LRB) has drafted a fairly comprehensive set of changes in laws governing railroads. The LRB contacted me about dealing with 'obsolete' railroad laws and I provided him a draft from 2000 that I wrote to modernize our statutes and eliminate federally preempted provisions.

I have had a chance to review the draft. In many ways the LRB draft follows the proposal I wrote. However, there are differences from my draft, one major and some minor. Most significant, the LRB draft would **repeal 192.25, the 2-man train crew law**. (For the record, this repeal was **not** in my draft). My concern is that such a controversial change could torpedo the whole bill which contains many good changes and modernizations. The OCR would be amenable to revising s. 192.25 to conform the statute to the federal court case that limited its scope. *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (1999).

The LRB draft does change the penalties for violations of the railroad statutes from fines and jail time or both (criminal) to forfeitures (civil), which is good, but it leaves the dollar amounts the same. I had proposed moderate increases.

Other specific provisions of the LRB draft in order.

1. S. 192.29 (3) (a), regarding train horns, should include some reference to federal quiet zones. The federal rules will require the blowing of horns at some crossings, but prohibit the blowing of horns within federally recognized 'quiet zones'.
2. S. 192.29 (5), regarding the proper crossbuck sign, should instead use the better language in AB 512 that would also amend this section (yield sign legislation).
3. S. 192.292 generally limiting the blockage of crossings to 10 minutes should **not** be repealed. Federal court decisions are still developing in this area. The federal 7th Circuit (covering Wisconsin has not ruled on this issue).
4. S. 192.295, imposing a penalty for failing to sound the horn, should be repealed because it is preempted by the train horn rule.

Gary, Aaron

From: Wood, Doug RR
Sent: Tuesday, June 28, 2005 2:01 PM
To: Gary, Aaron
Subject: LRB/2511 Railroad statutes

Attachments: draft stat changes 06-2005.doc

Aaron,

Here is a memo I drafted after the drat railroad legislation. The Commissioner has signed of on this memo as well.

Doug



draft stat changes
06-2005.doc...

Douglas Wood
Legal Counsel
Office of the Commissioner of Railroads
608-266-9536
608-261-8220 (fax)

5. S. 195.03 (19) is changed to require water carriers, but not railroads to maintain safe tracks and structures. While the state is partially preempted with regard to track, I do not believe the state should totally concede authority over the safety of all railroad structures.
6. SS. 195.305 and 195.31 regarding railroad crossings (two railroads crossing one another) and regarding making certain bridges safe are repealed for reasons that are unclear to me. The OCR would especially object to the repeal of s. 195.31.
7. S. 195.34, regarding railroads providing copies of certain reports, should have added the phrase 'any accident or incident report' in addition to 'monthly reports'.

Some changes I proposed that were not included in the LRB draft:

1. Created s. 195.001 to clarify that recreational trails are included in the definition of 'highways', except for snowmobile trails. We currently define 'highways' in this manner and have been sustained in circuit court.
2. Changed the definition of "railroad" in s. 195.02 (1) to a functional definition, rather than an economic definition. The Interstate Commerce Commission Termination Act (ICCTA) preempts state economic regulation of railroads. The office mission focuses on rail safety, especially at crossings. For safety regulation purposes, it does not matter whether a train is operated by a common carrier or by a private company.
3. Created an emergency investigation and order power (s. 195.049). This new provision authorizes the office to conduct emergency investigation and issue emergency orders without following the normal full administrative process. The provision requires the office to conduct a hearing, after regular notice, within 90 days of the emergency order. Adoption of this section would enable the office to respond immediately to threats to public safety. The wording was modeled on federal provisions regarding emergency orders. See, 49 USC s. 20104.

Draft stat changes 06-2005

Gary, Aaron

From: Thiel, Jim
Sent: Friday, July 08, 2005 3:00 PM
To: Rep. Townsend
Cc: Nilsen, Paul; Lepeska, Allyn; Adams, Ron; Gary, Aaron; Wood, Doug RR
Subject: RE: Cosponsor/Townsend/LRB-3278 RE: Rail Modernization/Deadline Wednesday, July 20

Attachments: WISDOT REVIEW of Revision Bill Draft and Note -- LRB2511/P1

Dear Rep. Townsend:

At Doug Wood's request from OCR, a number of us a DOT reviewed a preliminary draft and drafter's note of this railroad update bill -- LRB2511/P1. Below is the e-mail with our general and specific comments that we recently sent back to Doug Wood and Aaron Gary at LRB as we knew he had drafted it and some of our comments were technical drafting comments or of potential interest.

We hope that these detailed comments may be of some help and value to you. They do not necessarily represent any official position of DOT, but only the combined comments of those folks who generally work in this area and are familiar with the statutes involved.



WISDOT REVIEW of
Revision Bill...

Sincerely,

Jim Thiel, Counsel
Wisconsin DOT
State Bar #1012582
4802 Sheboygan Ave.
P.O. Box 7910
Madison, WI 53707
608 266 8928
jim.thiel@dot.state.wi.us

-----Original Message-----

From: Rep. Townsend [mailto:Rep.Townsend@legis.state.wi.us]
Sent: Friday, July 08, 2005 1:15 PM
To: *Legislative All Assembly; *Legislative All Senate
Cc: rjpiriot@wmc.org; samgratz@tds.net; kevinsoucie@msn.com; utulo56@mailbag.com; Wood, Doug RR; Thiel, Jim
Subject: Cosponsor/Townsend/LRB-3278 RE: Rail Modernization/Deadline Wednesday, July 20

Dear Colleagues:

Regulations that are obsolete or preempted by Federal law or rule continue in Wisconsin law, long after the reason they were created in the first place is gone. Excessive regulations needlessly drive up the cost of providing rail service in Wisconsin. Inflated rail costs, in turn, drive the costs of Wisconsin's raw materials and finished products in the marketplace. The manufacturing sector is most affected, and this is where we stand to gain or lose good-paying, family supporting jobs.

I have had drafted LRB-3278 to address the many outmoded and preempted rail statutes in Wisconsin. This takes a comprehensive look at bringing up-to-date this whole section of Wisconsin law. Many of the references are decades old, and reference practices and regulatory conditions that have not existed for many years.

I hope you would review the attached LRB analysis contained within the draft, and join with me by co-

sponsoring this bill. In doing so, we may make our Wisconsin laws, and the industry there regulated much more efficient and attuned to the current situation.

Contact my office by replying to this e-mail or by phone at 266-3156 by **Wednesday, July 20** to become a cosponsor.

<< File: 05-32781.pdf >>

Gary, Aaron

From: Thiel, Jim
Sent: Thursday, July 07, 2005 9:21 AM
To: Wood, Doug RR; Gary, Aaron
Cc: Adams, Ron; Lepeska, Allyn; Nilsen, Paul
Subject: WISDOT REVIEW of Revision Bill Draft and Note -- LRB2511/P1

Hi Doug and Aaron,

At Doug's request, WISDOT (Ron Adams, Allyn Lepeska, Paul Nilsen and I) divided up the bill draft for review and comment back to you. We have no objection to your sharing this with Sam Gratz if you wish to do so.

INITIAL POLICY QUESTIONS AND COMMENTS:

1. Track Inspection. I thought you folks at OCR made the decision that you didn't want to provide the labor for FRA to do inspections because FRA retained all the decision making authority and everyone is short of positions. Hence, do you really want the explicit permissive authority or implied work in 189.02(2m) etc.?

2. What would you think about just repealing 189.02(5) and(6)? It has never been used since created and is unlikely to ever be used.

189.02(5)

(5) The secretary may request the office to hold hearings and advise the secretary on transportation plans, policies, goals, priorities and programs affecting railroads.

(6) The secretary may by rule provide for administrative appellate review by the office of determinations of the department in areas that affect railroads and that are specified by the secretary. In areas where such administrative appellate review is provided, recourse thereto shall be a condition precedent to judicial review under ch. 227.

3. Might want to reword and put some teeth in 190.08.

190.08 Streams, highways, restored. Every corporation constructing, owning or operating a railroad shall restore every watercourse, street, highway, road or canal across, along or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. And may acquire any lands required to change or restore any highway, street, canal or watercourse, and lands so taken shall become a part of such highway or street. This section shall not apply to sloughs or bayous closed by the government prior to April 14, 1893, to aid the navigation of rivers; but in case such sloughs or bayous are thereafter closed by any railroad company such company shall be liable in damages to any person owning lands thereon injured thereby. The statutes for acquiring land by right of eminent domain shall apply in assessing damages for such closing.


4. 192.33 on fencing needs a better means of enforcing. Railroads seem to ignore or resist. Perhaps not realistic as written.

5. Various Preemption Wording Problems -- This was a common comment by all reviewers. In some places the phrase "NOT CONTRARY TO OR INCONSISTENT WITH" various federal statutes and regulations or order of FRA, STB of other federal agency or US Const. is used. In other places the phrase chosen is "TO THE EXTENT CONSISTENT WITH FEDERAL LAW." Why the difference in wording? The first phrase allows Wisconsin to fill in any gaps. The second phrase seems to say can only parallel federal law. This will lead to endless avoidance and confusion -- our prediction. Why not bite the bullet and just leave in place that which State wants to regulate. Also why mention the specific federal statutes and regulations? Another option would be to use a phrase such as "encouraged to conform as nearly as practicable to federal forms and procedures."

08/29/2005

PAGE BY PAGE COMMENTS:

Paul Nilsen:

1. P. 10, line 4, define "water carrier" -- insert "as defined in s. 195.02(5)"
2. P. 11, line 8, there is no water carrier regulation under 189 to 192, only under 195.
3. P. 11, add to definition of railroad "water carrier under common control with a railroad when transporting for continuous carriage or shipment."
4. P. 12, line 11, you will need an initial applicability provision so existing ICC orders remain in effect, ditto P. 13, line 22.
5. P. 12, lines 16 and 17, compare with P. 12, line 24. OCR should have an open field to regulate where NOT preempted by federal. Line 24 language should be changed.
6. P. 13, line 1, if OCR really wants this authority recommend insert "or state" after federal.
7. P. 13, lines 5 and 6, same issue on preemption consistency and confusion.
8. P. 15, lines 9 to 12. Don't need these definitions since the phrases are only used on line 15. Can insert "as defined in 49 USC 10102(5)" after "rail carriers" and "as defined in 49 USC 10102(9)" after "transportation" on line 15.
9. P. 17, lines 1 to 6, same comment as to "NOT CONTRARY TO OR INCONSISTENT."
10. P. 17, line 11, if you really want this authority remove the word "federal" and on line 13, after "federal" you might want to insert "or state."
11. P. 18, line 20, a forfeiture of \$100 is inadequate for "willful neglect of railroad employees." 

My assignment was pages 20 to 29 in the bill draft. Here are my comments:

1. P. 20, Why not repeal 192.327? Motor vehicles of railroads used to transport its employees or assign to DWD. Also on P. 20, consider inserting some modification to 192.32(1)(c) about walking directly across tracks is o.k. This is how people get hit. Ought to be better way to express.
2. P. 21, The forfeitures are ridiculously small. Maybe should just amend 192.55(7) so remaining offenses (not those cross referenced) make each day a separate offense?
3. P. 21, Why not repeal 192.71 Lands may be sold and 192.72 Lands may be mortgaged. These are so old as to be meaningless in my view.
4. PP. 21 AND 22. Wording of 195.02(4m) is problematic -- "NOT CONTRARY TO OR INCONSISTENT WITH" various federal statutes and regulations or any order of FRA, STB of other federal agency or US Const. will lead to endless avoidance and confusion -- my prediction. Why not bite the bullet and just leave in place that which State wants to regulate. Perhaps conform as nearly as practicable to federal forms and procedures might be a better approach. Also on P. 22, definition of "water carrier" is confusing and seems to leave a gap. On line 13, should the word "freight" be inserted after "transporting?"
5. P. 24. I would recommend retention of authority over railroad structures in 195.03(19). Railroad may have maintenance responsibility for deck for vehicle travel over railroad on grade separation structure. Who orders repair if not OCR?
6. PP. 24 and 25. Recommend repeal of 195.04 and no creation of 195.0(1m) -- direct WISDOT to investigate -- WISDOT does not have staff to do it and this authority has never been used to my knowledge.
7. P. 26. Recommend delete any reference to WISDOT in the procedure after summary investigation statute: 195.043. WISDOT doesn't do and doesn't have staff to do the investigations.

QUESTION. Is it desired to regulate water carriers as proposed? How much regulation takes place now?

Ron Adams comments (his are picked up in other parts of this too) and some of mine are in here:

1. PP. 32 to 35. Why not repeal all statutes treated in SECTIONS 86, 87, 88, and 92? Ancient.
2. P. 35, SECTION 94. Is this needed? Repeal?
3. P. 35, line 21, Why not repeal 195.25 also?
4. PP. 35 to 36, SECTION 96. Same problem as "TO EXTENT CONSISTENT WITH FEDERAL LAW" and "IF PERMITTED BY FEDERAL LAW." Why change in wording. Why

even needed. Believe this is Coast Guard responsibility. DITTO P. 36, line 14. Also thought you folks at OCR didn't want to do this for feds -- unfunded. DITTO P. 36, SECTION 98. Why do you need this authority? Can inspect signals under state law right now can't you?

5. P. 37, line 7 - Should "accidents" be "crashes"?

6. P. 38, line 19, WISDOT does not want to investigate and has no staff or expertise. Recommend take this opportunity to delete WISDOT from this.

7. P. 39, Section 107 - Is this type of stuff covered by the Uniform Commercial Code? Also on line 12, WISDOT does not want to do this.

8. P. 17, SECTION 108. Why not repeal entirely. If retained, should the recreated section remain in Chapter 195?

9. P. 40, Section 111 - Line 25, Seems like some of the funds collected as a result of WISDOT expenses should come back to WISDOT if the direction or request authority is retained. WISDOT would prefer to get out of entirely. Eliminate that.

10. P. 46, Section 122 - What is the initial applicability date for the changes involving "water carriers?"

Allyn Lepeska's comments:

Section 84.05 could be recodified to make it more readable.

P. 30 Section 81 Section 195.08(11) Is it logical that there only be one class of freight? It seems to me different types of freight entail different costs and thus different rates. Section 195.08(11) can probably be repealed.

P. 31 Section 83 section 195.11 Discrimination prohibited. If we no longer have tariffs, we do not need this statute.

p. 32 Section 85 section 195.13 Free transportation: reduced rates; passes, limitations. State and federal employees are prohibited from accepting free transportation. It is questionable whether there need to be other limitations and thus this statute may be repealed.

P. 34 Section 88 Section 195.16 Pass Lists If section 195.13 is repealed, this statute may also be repealed.

P. 34 Section 92 Section 195.19(2) Water Carrier Freight The modern transportation system in most cases operates without buildings and thus this statute is not necessary and may be repealed.

Not listed Section 195.29 Medical Supplies on Trains - Is this necessary?

P. 35 Section 96 section 195.26 Safety devices; block system "extent consistent with federal law" vs. "if permitted under federal law"

P. 37 Section 101 Do we want to repeal section 195.31, Bridges made safe?

Jim Thiel, Counsel
Wisconsin DOT
State Bar #1012582
4802 Sheboygan Ave.
P.O. Box 7910
Madison, WI 53707
608 266 8928

08/29/2005

jim.thiel@dot.state.wi.us

-----Original Message-----

From: Thiel, Jim

Sent: Tuesday, June 14, 2005 9:37 AM

To: Adams, Ron; Lepeska, Allyn

Cc: Haag, Marianne; Nilsen, Paul; Maassen, Joe

Subject: FW: Revision Bill Draft and note

Doug Wood sent this over and asked for comments back to him. It's long. Want to review as a team or consolidate individual comments? It is to be a clean up/update bill, not dramatic changes at all.

Could meet next week some time. Let me know if you are game and I'll ask Marianne to find a good meeting time/place.

Jim Thiel, Counsel
Wisconsin DOT
State Bar #1012582
4802 Sheboygan Ave.
P.O. Box 7910
Madison, WI 53707
608 266 8928
jim.thiel@dot.state.wi.us

-----Original Message-----

From: Wood, Doug RR [mailto:Doug.Wood@psc.state.wi.us]

Sent: Tuesday, June 14, 2005 9:33 AM

To: Thiel, Jim

Subject: FW: Revision Bill Draft and note

From: Sam Gratz [mailto:samgratz@tds.net]

Sent: Monday, June 13, 2005 1:58 PM

To: Wood, Doug RR

Subject: Revision Bill Draft and note

As we discussed.

500v

in 9/13

gis

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO 2005 ASSEMBLY BILL 588

fill in ✓

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 12, line 19: delete the material beginning with "49 USC" and ending
- 3 with "authority" on line 22 and substitute "federal law". ✓
- 4 **2.** Page 12, line 23: delete lines 23 to 25. ✓
- 5 **3.** Page 13, line 1: delete lines 1 to 3. ✓
- 6 **4.** Page 13, line 3: after that line insert:
- 7 "SECTION 10m. 189.02 (5) and (6) of the statutes are repealed."
- 8 **5.** Page 13, line 6: delete the material beginning with "49" and ending with
- 9 "authority," on line 9 and substitute "federal law". ✓
- 10 **6.** Page 15, line 6: delete lines 6 to 13. ✓
- 11 **7.** Page 15, line 16: after "carriers" insert "as defined in 49 USC 10102 (5)". ✓

1 **8.** Page 15, line 16: after "transportation" insert ", as defined in 49 USC 10102
2 (9)". ✓

3 **9.** Page 15, line 19: delete lines 19 to 21 and substitute "federal law". ✓

4 **10.** Page 17, line 3: delete the material beginning with "49" and ending with
5 "authority," on line 6 and substitute "federal law". ✓

6 **11.** Page 17, line 9: delete lines 9 to 14. ✓

7 **12.** Page 17, line 20: delete "and (2)" ✓

8 **13.** Page 17, line 20: delete "are" and substitute "is". ✓

9 **14.** Page 17, line 20: after that line insert:

10 "**SECTION 29m.** 192.29 (2) of the statutes is renumbered 195.28 (1m) and
11 amended to read:

12 195.28 (1m) ARTERIAL STOP SIGNS. In any proceeding under sub. (1) or under
13 s. 195.28, the office may by order require that the state or municipality install at any
14 crossing involved in such proceeding an official stop sign." ✓

History: 1977 c. 29 ss. 1654 (8) (b), (9) (e), 1656 (43); 1977 s. 116; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254.

15 **15.** Page 17, line 22: delete that line and substitute:

16 "192.29 (3) (title) ~~BELL TO RING, MUNICIPAL AUTHORITY~~ HORN TO SOUND, CROSSING
17 DEVICES". PLAIN

18 **16.** Page 17, line 24: delete "No" and substitute "No A".

19 **17.** Page 17, line 24: delete "shall run" and substitute "~~shall run~~ running".

20 **18.** Page 17, line 25: delete "within any city or village" and substitute "within
21 any city or village".

22 **19.** Page 17, line 25: delete "operated," and substitute "operated,".

(9) #. Page 17, line 21: delete "amended" and substitute
"repealed and recreated".

LA: [Handwritten initials]

of the statutes are
and substitute "of the
statutes is"

STET: leave
as typed

STET: Leave as typed

PLAIN

PLAIN

- 1 **20.** Page 18, line 1: delete “unless the” and substitute “~~unless the~~”. ✓
- 2 **21.** Page 18, line 2: delete “railroad train or locomotive” and substitute “shall
3 sound its”. ✓
- 4 **22.** Page 18, line 3: delete “is sounded”. ✓
- 5 **23.** Page 18, line 3: after that line insert:
6 “**SECTION 31m.** 192.29 (3) (b) of the statutes is amended to read:
7 192.29 (3) (b) Flagmen or gates shall be placed and maintained, or such
8 mechanical safety appliances shall be installed upon such public traveled grade
9 crossings ~~in villages and cities~~, as the ~~city or village authorities~~ office and the
10 railroad company may by agreement decide; such agreement may include the
11 apportionment of the cost of installation of such mechanical devices.”. ✓
- History: 1977 c. 29 ss. 1654 (8) (b), (9) (e), 1656 (43); 1977 c. 116; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254.
- 12 **24.** Page 18, line 5: delete lines 5 to 21 and substitute: ✓
13 “**SECTION 35m.** 192.295 of the statutes is repealed.”. ✓
- 14 **25.** Page 19, line 2: delete “provides” and substitute “provided”. ✓
- 15 **26.** Page 19, line 25: after that line insert:
16 “**SECTION 37m.** 192.32 (1) (c) of the statutes is repealed.”. ✓
- 17 **27.** Page 20, line 4: delete the material beginning with “forfeit” and ending
18 with “\$2” on line 5 and substitute “~~not more than \$20 nor less than \$2~~ forfeit not less
19 than \$100 nor more than \$200”. ✓
- 20 **28.** Page 21, line 6: delete “more” and substitute “more less”. ✓
- 21 **29.** Page 21, line 7: after “both” insert “nor more than \$200”. ✓
- 22 **30.** Page 21, line 10: delete “\$1” and substitute “\$1 \$100”. ✓

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.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

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.

Aaron R. Gary
 Legislative Attorney
 Phone: (608) 261-6926
 E-mail: aaron.gary@legis.state.wi.us

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

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.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0945/P1dn

ARG:.....

g's

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 ss. 195.26, 195.27, and 195.34, as I believe this is the appropriate phrase.

↑ paren
→ and similar phrases in ss.
paren

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

fix so that the double quote + single quote point the same way

- 1 **31.** Page 21, line 10: delete “\$50” and substitute “\$50”. ✓
- 2 **32.** Page 21, line 11: after “~~imprisonment~~” insert “\$200”. ✓
- 3 **33.** Page 21, line 12: after that line insert:
- 4 “SECTION 45m. 192.71 and 192.72 of the statutes are repealed.”. ✓
- 5 **34.** Page 22, line 2: delete the material beginning with “49 USC” and ending
- 6 with “authority,” on line 5 and substitute “federal law”. ✓
- 7 **35.** Page 22, line 13: after “transporting” insert “freight”. ✓
- 8 **36.** Page 24, line 20: delete “direct the” and substitute “direct the”. ✓
- 9 **37.** Page 24, line 21: delete “department to” and substitute “~~department to~~”. ✓
- 10 **38.** Page 24, line 21: delete “hearing. The” and substitute “hearing. The”.
- 11 **39.** Page 24, line 22: delete lines 22 to 23 and substitute “~~report of the~~
- 12 ~~department shall be presented to the office only at the hearing on the complaint, if~~
- 13 ~~hearing is requested and held. No order may be entered by the office”.~~ ✓
- 14 **40.** Page 24, line 24: after “hearing” insert “, except as otherwise provided in
- 15 this chapter”. ✓
- 16 **41.** Page 24, line 25: delete that line. ✓
- 17 **42.** Page 25, line 9: delete “water carrier”. ✓
- 18 **43.** Page 25, line 10: delete “or railroad” and substitute “railroad water
- 19 carrier”. ✓
- 20 **44.** Page 25, line 13: on lines 13 and 15, delete “water carrier or railroad” and
- 21 substitute “railroad water carrier”. ✓

⑨ #. Page 25, line 1:
delete lines
1 to 7.

1 **45.** Page 26, line 2: delete "water carrier or, if a matter under its jurisdiction,
2 to any railroad" and substitute "railroad water carrier". ✓

3 **46.** Page 26, line 3: delete "investigate the matter or request the" and
4 substitute "request the". ✓

5 **47.** Page 26, line 4: delete "department to" and substitute "department to". ✓

6 **48.** Page 26, line 7: delete "by the department or the office" and substitute "by
7 the department". ✓

8 **49.** Page 26, line 10: delete "the report of the department" and substitute "the
9 any report of the department". ✓

10 **50.** Page 26, line 13: delete "water". ✓

11 **51.** Page 26, line 14: delete "carrier or railroad" and substitute "railroad water
12 carrier". ✓

13 **52.** Page 30, line 3: delete "direct the department" and substitute "direct the
14 department". ✓

15 **53.** Page 30, line 4: delete "to" and substitute "to". ✓

16 **54.** Page 30, line 4: delete "Any report of" and substitute "Any report of". ✓

17 **55.** Page 30, line 5: delete that line and substitute "the department shall be
18 presented to the office only at the hearing on the complaint". ✓

19 **56.** Page 32, line 15: delete "\$50" and substitute "\$50 \$100". ✓ *scored period*

20 **57.** Page 36, line 14: delete the material beginning with "The" and ending with
21 line 16. *"law" on*

22 **58.** Page 36, line 17: delete lines 17 to 20. ✓

*LPS: please
check component - it should be
Item-Delmatr1*

- 1 **59.** Page 37, line 3: delete “\$10” and substitute “\$10 \$100”. ✓
- 2 **60.** Page 37, line 3: delete “\$50” and substitute “\$50 \$200”. ✓
- 3 **61.** Page 37, line 4: delete “, 195.31”. ✓
- 4 **62.** Page 37, line 11: delete “monthly”. ✓
- 5 **63.** Page 38, line 19: delete “investigate or direct the department to” and
6 substitute “~~direct the department to~~”. ✓
- 7 **64.** Page 39, line 12: delete “request the department to” and substitute
8 “~~request the department to~~”. ✓
- 9 **65.** Page 40, line 24: delete “expenses, including all expenses” and substitute
10 “~~expenses, including all expenses~~”. ✓
- 11 **66.** Page 40, line 25: delete that line and substitute “~~incurred by the~~
12 ~~department at the request or direction of the office~~ and shall render”. ✓
- 13 **67.** Page 46, line 19: after that line insert:
14 “**SECTION 121m. Nonstatutory provisions.**
- 15 (1) All orders issued by the office of the commissioner of railroads, including
16 any order requiring the placement of any crossing protection device or official traffic
17 control device, that are in effect on the effective date of this subsection remain in
18 effect until their specified expiration date or until modified or rescinded by the
19 office.”.

20

(END)

A handwritten note in a circle, possibly reading "Note" or "Note" with a checkmark above it.

Gary, Aaron

From: Gary, Aaron
Sent: Thursday, November 03, 2005 3:30 PM
To: Pulda, Matt
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Matt,
I have a few questions in redrafting this. I assume you want it as a "/1" draft.

doesn't read right

Section 12: Can you give me any specific guidance on how you want this clarified (or can DOT)? The bill is drafted consistent with information received from OCR. It would be particularly helpful if DOT could provide me with their recommendation of how the provision should read.

not sure about 190.02(5) & ch. 195

Section 36: I can't make sense of this comment. (Also, I believe the provision was drafted consistent with information received from OCR.)

OK as is - bad copy

Section 64: This language referred to is not created text, but existing law. Is there a reason you're changing this, other than to delete the reference in current law to the "weekly calendar"? The language you've used for the public inspection is actually greatly broader than that now in the statute - can I change the reference to "weekly calendar" and leave the public inspection language as is? Also, do you want to include any time frame in which the office publishes notice of the investigation on its web site?

OK as is

Thanks for your help. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

*He w/ Matt 11/3
talked w/
Allyn Lepercha
at DOT*

From: Pulda, Matt
Sent: Thursday, November 03, 2005 10:48 AM
To: LRB.Legal
Subject: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Aaron,

Rep. Townsend would like to incorporate the following DOT technical comments on AB 588 into the amendment you sent our office on Sept. 26:

Section 12 The amendment of section 190.02(5) is not as clear as it could, especially if no bridge is involved.

>>

Section 36 Section 192.31(1)(b), page 9 line 5 should be deleted.

>>

Section 49 The definition of water carrier should also include contract carriage. See 49 USC 13521 and section 194.01(2), Stats.

>>

Section 64 Line 10. I do not believe OCR has a weekly calendar. I would change it to "The office shall publish notice of the investigation on its web site. All matters considered by the office shall be available upon request."

In addition, Rep. Townsend would like to include an amendment to current sec. 192.292 (trains obstructing highways) so that the **fine is increased to \$500**. Furthermore, he would like to the section **so that only the railroad companies are liable**, rather than the crew members currently listed. However, the 14-day jail sentence would remain as an option.

Thanks, and let me know if you have any questions.

Matthew D. Pulda
Legislative Aide
Rep. John F. Townsend
(608) 266-3156

Gary, Aaron

From: Lepeska, Allyn
Sent: Friday, November 04, 2005 3:02 PM
To: Gary, Aaron
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

sounds good.

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Friday, November 04, 2005 2:52 PM
To: Lepeska, Allyn; Pulda, Matt
Cc: Adams, Ron
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Thanks Allyn. I will create a "global definition" in s. 195.02 applicable throughout ch. 195 and limit its application to water carriers. It will read something like:

"Common carrier,' with respect to a water carrier, includes a contract carrier other than a private contract carrier."

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Lepeska, Allyn
Sent: Friday, November 04, 2005 2:25 PM
To: Gary, Aaron; Pulda, Matt
Cc: Adams, Ron
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Railroads always go in fixed routes and would not be contract carriers.

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.state.wi.us]
Sent: Friday, November 04, 2005 2:00 PM
To: Lepeska, Allyn; Pulda, Matt
Cc: Adams, Ron
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Matt and Allyn,

I initially added "contract" to the definition ("common or contract carrier" instead of "common carrier"). But to maintain consistency, if I add "contract" here, I should add the term in various other provisions where "common carrier" is referred to. In particular, s. 195.02 (3) should be amended if "contract" is added to the definition of "water carrier. I considered adding a global definition (much easier than treating every provision) of "common carrier" to include a contract carrier, but this will impact many provisions related to railroads as well as water carriers and will therefore go beyond the scope of the intended change. (I started to amend s. 195.02 (3) and realized, in treating that provision, a decision will need to be made as to whether "common or contract carrier" should replace "common carrier" only for water carriers or for railroads as well.) The scope of ch. 195 is pretty well set out in s. 195.02 (3) and (4). Unlike ch. 194, ch. 195 does not presently refer to "contract carriers" but the term "common carrier" seems to include the concept of a "contract carrier" as well, at least under the language of s. 195.02 (3) to (5). I think it will create confusion to add the term "contract carrier" in one provision in ch. 195 but not to add it in various other corresponding provisions.

Do you want me to make this change adding "contract" to the "water carrier" definition? If so, when I treat other provisions referencing "common carriers" in ch. 195, should I only add the term "contract" when it relates to a water carrier or should the change occur in all instances, both water carrier and railroad? Or would you prefer a global definition for all of ch. 195 that says, "'Common carrier' includes a contract carrier other than a private

contract carrier."?

Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Lepeska, Allyn
Sent: Friday, November 04, 2005 11:37 AM
To: Pulda, Matt
Cc: Gary, Aaron; Adams, Ron
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

"Common carrier" normally means carriage over a fixed route on a schedule. Ch. 195 does not define common carrier. "Contract carrier" usually means carriage over irregular routes.

Section 49 uses "common carrier of property by water between fixed end points".

49 USC 1351 provides that the STB has jurisdiction over "transportation ... by water carrier between a place in a state and a place in another state."

The section 49 coverage may not cover all "transportation ... by water carrier between" two places in this state.

You could remedy this concern by deleting "common" or adding "contract" or defining common to be inclusive.

If you have nay questions feel free to call me at 6-0253.

-----Original Message-----

From: Pulda, Matt [<mailto:Matt.Pulda@legis.state.wi.us>]
Sent: Thursday, November 03, 2005 4:06 PM
To: Lepeska, Allyn
Subject: FW: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Here's is the LRB drafter's comments about your suggestions about Section 49 within AB 588 (amending 195.02(5)).

Thanks!

Matt

From: Gary, Aaron
Sent: Thursday, November 03, 2005 4:01 PM
To: Pulda, Matt
Subject: RE: Message for Aaron Gary re: LRBa0945/P1 (amendment to AB 588)

Matt, Sorry, I also can't figure out what DOT wants in Section 49. The citations they refer to seem to point to motor carriers. Do they want to give OCR partial jurisdiction over motor carriers? Do they want the term "contract carrier" added along with the term "common carrier"? Unlike ch. 194, ch. 195 doesn't seem to distinguish between common carriers and contract carriers [the term "contract carrier" is not used] - wouldn't a common carrier of property under ch. 195 include a contract carrier? I would appreciate it if DOT could offer me a specific suggestion on how they want this definition to read. I also note that, to the extent the definition does not match perfectly with the federal provision, this may be reflective of the DOT/OCR split in jurisdiction that is not paralleled under the federal system.

Thanks. Aaron

Aaron R. Gary



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBa0945/P1 1

ARG:cjs:J

Soon

in 11/4

Needed
by 11/16
noon

KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT,

TO 2005 ASSEMBLY BILL 588

Stays

bill list ✓

1 At the locations indicated, amend the bill as follows:

2 1. Page 12, line 19: delete the material beginning with "49 USC" and ending
3 with "authority" on line 22 and substitute "federal law".

4 2. Page 12, line 23: delete lines 23 to 25.

5 3. Page 13, line 1: delete lines 1 to 3.

6 4. Page 13, line 3: after that line insert:

7 "SECTION 10m. 189.02 (5) and (6) of the statutes are repealed."

8 5. Page 13, line 6: delete the material beginning with "49" and ending with
9 "authority," on line 9 and substitute "federal law".

insert
1-9 →

10 6. Page 15, line 6: delete lines 6 to 13.

11 7. Page 15, line 16: after "carriers" insert "as defined in 49 USC 10102 (5)".

1 **8.** Page 15, line 16: after “transportation” insert “, as defined in 49 USC 10102
2 (9)”.

3 **9.** Page 15, line 19: delete lines 19 to 21 and substitute “federal law”.

4 **10.** Page 17, line 3: delete the material beginning with “49” and ending with
5 “authority,” on line 6 and substitute “federal law”.

6 **11.** Page 17, line 9: delete lines 9 to 14.

7 **12.** Page 17, line 20: delete “and (2)”.

8 **13.** Page 17, line 20: delete “are” and substitute “is”.

9 **14.** Page 17, line 20: after that line insert:

10 “**SECTION 29m.** 192.29 (2) of the statutes is renumbered 195.28 (1m) and
11 amended to read:

12 195.28 (1m) ARTERIAL STOP SIGNS. In any proceeding under sub. (1) ~~or under~~
13 ~~s. 195.28~~, the office may by order require that the state or municipality install at any
14 crossing involved in such proceeding an official stop sign.”.

15 **15.** Page 17, line 21: delete “amended” and substitute “repealed and
16 recreated”.

17 **16.** Page 17, line 22: delete that line and substitute:

18 “192.29 (3) (title) HORN TO SOUND, CROSSING DEVICES.”.

19 **17.** Page 17, line 24: delete “No” and substitute “No A”.

20 **18.** Page 17, line 24: delete “shall run” and substitute “shall run running”.

21 **19.** Page 17, line 25: delete “within any city or village” and substitute “within
22 ~~any city or village~~”.

23 **20.** Page 17, line 25: delete “operated,” and substitute “operated;”.

1 **21.** Page 18, line 1: delete “unless the” and substitute “unless the”.

2 **22.** Page 18, line 2: delete “railroad train or locomotive” and substitute “shall
3 sound its”.

4 **23.** Page 18, line 3: delete “is sounded”.

5 **24.** Page 18, line 3: after that line insert:

6 “**SECTION 31m.** 192.29 (3) (b) of the statutes is amended to read:

7 192.29 (3) (b) Flagmen or gates shall be placed and maintained, or such
8 mechanical safety appliances shall be installed upon such public traveled grade
9 crossings ~~in villages and cities~~, as the ~~city or village authorities~~ office and the
10 railroad company may by agreement decide; such agreement may include the
11 apportionment of the cost of installation of such mechanical devices.”.

12 **25.** Page 18, line 5: delete lines 5 to 21 and substitute:

13 **SECTION 35m.** 192.295 of the statutes is repealed.”.

14 **26.** Page 19, line 2: delete “provides” and substitute “provided”.

15 **27.** Page 19, line 25: after that line insert:

16 “**SECTION 37m.** 192.32 (1) (c) of the statutes is repealed.”.

17 **28.** Page 20, line 4: delete the material beginning with “forfeit” and ending
18 with “\$2” on line 5 and substitute “~~not more than \$20 nor less than \$2~~ forfeit not less
19 than \$100 nor more than \$200”.

20 **29.** Page 21, line 6: delete “more” and substitute “more less”.

21 **30.** Page 21, line 7: after “~~both~~” insert “nor more than \$200”.

22 **31.** Page 21, line 10: delete “\$1” and substitute “\$1 \$100”.

23 **32.** Page 21, line 10: delete “\$50” and substitute “\$50”.

insert
3-12

- 1 **33.** Page 21, line 11: after “imprisonment” insert “\$200”.
- 2 **34.** Page 21, line 12: after that line insert:
- 3 “**SECTION 45m.** 192.71 and 192.72 of the statutes are repealed.”.
- 4 **35.** Page 22, line 2: delete the material beginning with “49 USC” and ending
5 with “authority,” on line 5 and substitute “federal law”.
- 6 **36.** Page 22, line 13: after “transporting” insert “freight”.
- 7 **37.** Page 24, line 20: delete “direct the” and substitute “~~direct the~~”.
- 8 **38.** Page 24, line 21: delete “department to” and substitute “~~department to~~”.
- 9 **39.** Page 24, line 21: delete “hearing. The” and substitute “hearing. ~~The~~”.
- 10 **40.** Page 24, line 22: delete lines 22 to 23 and substitute “~~report of the~~
11 ~~department shall be presented to the office only at the hearing on the complaint, if~~
12 ~~hearing is requested and held. No order may be entered by the office~~”.
- 13 **41.** Page 24, line 24: after “hearing” insert “, except as otherwise provided in
14 this chapter”.
- 15 **42.** Page 24, line 25: delete that line.
- 16 **43.** Page 25, line 1: delete lines 1 to 7.
- 17 **44.** Page 25, line 9: delete “water carrier”.
- 18 **45.** Page 25, line 10: delete “or railroad” and substitute “railroad water
19 carrier”.
- 20 **46.** Page 25, line 13: on lines 13 and 15, delete “water carrier or railroad” and
21 substitute “railroad water carrier”.

insert
4-5 →

insert
4-6 →

1 **47.** Page 26, line 2: delete “water carrier or, if a matter under its jurisdiction,
2 to any railroad” and substitute “railroad water carrier”.

3 **48.** Page 26, line 3: delete “investigate the matter or request the” and
4 substitute “request the”.

5 **49.** Page 26, line 4: delete “department to” and substitute “department to”.

6 **50.** Page 26, line 7: delete “by the department or the office” and substitute “by
7 the department”.

8 **51.** Page 26, line 10: delete “the report of the department” and substitute “the
9 any report of the department”.

10 **52.** Page 26, line 13: delete “water”.

11 **53.** Page 26, line 14: delete “carrier or railroad” and substitute “railroad water
12 carrier”.

13 **54.** Page 30, line 3: delete “direct the department” and substitute “direct the
14 department”.

15 **55.** Page 30, line 4: delete “to” and substitute “to”.

16 **56.** Page 30, line 4: delete “Any report of” and substitute “Any report of”.

17 **57.** Page 30, line 5: delete that line and substitute “the department shall be
18 presented to the office only at the hearing on the complaint.”

19 **58.** Page 32, line 15: delete “\$50” and substitute “\$50 \$100”.

20 **59.** Page 36, line 14: delete the material beginning with “. The” and ending
21 with “law” on line 16.

22 **60.** Page 36, line 17: delete lines 17 to 20.

- 1 **61.** Page 37, line 3: delete “\$10” and substitute “\$10 \$100”.
- 2 **62.** Page 37, line 3: delete “\$50” and substitute “\$50 \$200”.
- 3 **63.** Page 37, line 4: delete “, 195.31”.
- 4 **64.** Page 37, line 11: delete “monthly”.
- 5 **65.** Page 38, line 19: delete “investigate or direct the department to” and
6 substitute “~~direct the department to~~”.
- 7 **66.** Page 39, line 12: delete “request the department to” and substitute
8 “~~request the department to~~”.
- 9 **67.** Page 40, line 24: delete “expenses, including all expenses” and substitute
10 “~~expenses, including all expenses~~”.
- 11 **68.** Page 40, line 25: delete that line and substitute “~~incurred by the~~
12 ~~department at the request or direction of the office and shall render~~”.
- 13 **69.** Page 46, line 19: after that line insert:
- 14 **“SECTION 121m. Nonstatutory provisions.**
- 15 (1) All orders issued by the office of the commissioner of railroads, including
16 any order requiring the placement of any crossing protection device or official traffic
17 control device, that are in effect on the effective date of this subsection remain in
18 effect until their specified expiration date or until modified or rescinded by the
19 office.”.

20

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0945/1ins
ARG:.....

INSERT 1-9:

1. Page 13, line 20: delete "provisions of ch. 195, if" and substitute "the limitation that". ✓
2. Page 13, line 21: delete "shall leave leaves" and substitute "shall leave". ✓
3. Page 13, line 22: after "width" insert ", and subject to any other limitation on such construction provided by law". ✓

INSERT 3-12:

✓
"SECTION 34m. 192.292 of the statutes is amended to read:

192.292 Trains obstructing highways. It shall be unlawful to stop any railroad train, locomotive or car upon or across any highway or street crossing, outside of cities, or leave the same standing upon such crossing longer than 10 minutes, except in cases of accident; and any ~~conductor, engineer, brakeman or other person in charge thereof or responsible therefor who~~ railroad company that shall violate this section shall be liable to a fine of not more than \$25 ~~\$500~~ or ^{to} imprisonment of not more than 15 days. ✓

*any officer of such
company responsible for the
violation shall be liable*

INSERT 4-5:

4. Page 22, line 9: after "carriers" insert "or contract".

INSERT 4-6:

5. Page 22, line 14: after "shipment" insert ". In this chapter, "common carrier," with respect to a water carrier, includes a contract carrier other than a private contract carrier".