

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2281/P1dn
RCT:lmk:nwn

May 23, 2007

Chris McKinny:

This is a preliminary draft of the proposal relating to railroads and pesticides. The draft is based on the Minnesota bill that you provided.

I have tried to clarify some of the language from the Minnesota bill, but am uncertain that this draft captures the intent of that bill in all respects. I tried without success to get more information about the Minnesota proposal by searching Minnesota legislative Internet sites and doing general Internet searches. Some of the differences between this draft and the Minnesota bill are due to differences in our current laws. I based proposed s. 94.697 (4) (b) 3. and 4. in part on current s. 23.094 (3r) (c).

The Department of Agriculture, Trade and Consumer Protection (DATCP) has broad rule-making authority concerning pesticides under s. 94.69. In light of that provision, and especially s. 94.69 (1) (i), the rule-making authority in this draft may be unnecessary.

This draft requires DATCP to submit a report to the legislature recommending methods to fund the activities required in the draft. In order to ensure that funding is ultimately provided, you might want to include a funding mechanism in the bill. The Minnesota bill seems to contemplate providing start-up funding, but it does not specify an amount. It appears that the intent is to add an appropriation amount during the legislative process. Please let me know if you want to add funding to the draft.

I am not an expert on federal transportation law, but my understanding from Aaron Gary, our senior transportation drafter, is that federal law preempts state law on certain aspects of railroad operation and safety. Federal law preempts state law with respect to these matters, even when the activity appears to be confined to this state. The Federal Railroad Administration, within the federal Department of Transportation, exercises primary authority over rail safety and safety standards. The federal law does not preempt all state efforts to regulate railroads. States retain certain "police powers" despite the broad scope of exclusive federal railroad regulation. State laws are generally not preempted if they do not frustrate the federal scheme governing railroad safety and can be applied without interfering with federal law. Courts typically resolve issues of federal preemption on a fact-specific, case-by-case basis. It is possible that someone might challenge provisions of this proposal, particularly those related to the safety of railroad employees, on the grounds that they are preempted by federal law.

Please let me know if you have any questions or want any changes in the draft. When you are satisfied with the draft, I will prepare a version that may be introduced.

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