

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4674/1dn
PJH:jld:rs

April 13, 2010

Representative Barca,

Please review this draft to ensure that it is consistent with your intent. This draft is identical to 2009 Senate Bill 673.

Please note that the nonstatutory provision in this draft nullifies arbitration provisions in existing contracts. This could be considered an unconstitutional impairment of contract. The federal and Wisconsin constitutions both provide that the legislature may not pass a law "impairing the obligation of contracts" (article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution). However, this prohibition is not absolute.

The courts have held that a state may impair an existing contract in the exercise of its police powers for the general public welfare. Wisconsin courts would likely use the following analysis to determine whether the legislature may impair an existing contract for the general public welfare:

- a. Does the legislation substantially impair an existing contract?
- b. If the impairment is substantial, is there a significant and legitimate public purpose for the legislation?
- c. Even if there is a significant and legitimate public purpose, is the legislation a reasonable and necessary means of achieving that public purpose?

Although it is not possible to predict how a court would decide a challenge to this draft, I thought that you should at least be aware of this issue.

Please let me know if you have any questions or other concerns.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov