

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4043/P1ins
ARG:.....

SAR
X-refs □

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INSERT ANAL: *and water carrier*

Under current law, the Office of the Commissioner of Railroads (office) regulates railroad activities in Wisconsin. This bill eliminates the office, effective July 1, 2011, and generally transfers its functions to the Department of Transportation (DOT), with DOT orders reviewed by the Division of Hearings and Appeals (division) in the Department of Administration. In addition, any other function of the office having the character of contested case resolution is transferred to the division. The bill also transfers certain functions of the office relating to railroad organization to the Department of Financial Institutions. The bill transfers 4.0 FTE positions to DOT.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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INSERT 3-9:

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SECTION 1. 15.79 of the statutes is amended to read:

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15.79 Public service commission; creation. There is created a public

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service commission. No member of the commission may have a financial interest in

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a ~~railroad, water carrier, or~~ public utility. If any member voluntarily becomes so

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interested, the member's office shall become vacant. If the member involuntarily

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becomes so interested, the member's office shall become vacant unless the member

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divests himself or herself of the interest within a reasonable time. No commissioner

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may serve on or under any committee of a political party. Each commissioner shall

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hold office until a successor is appointed and qualified.

History: 1979 c. 171; 2005 a. 179.

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INSERT 7-1:

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SECTION 2. 84.05 of the statutes is amended to read:

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84.05 Railroad crossing improvements. On a highway which the

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department has authority to construct and which crosses a railroad, if the

1 department determines that the construction or reconstruction of a grade separation
2 or the rearrangement or elimination of a grade crossing or other rearrangement of
3 the highway or tracks is necessary in the interest of public safety or for convenience
4 of public travel, the department shall make a plan of the construction proposed and
5 an estimate of the cost thereof, including the cost of needed right-of-way; and shall
6 endeavor to make an arrangement with all persons concerned as to all matters
7 involved in the plan, including the portion of the cost of the contemplated work which
8 the persons shall defray. If the department is unable to contract with the persons
9 concerned as to the distribution and payment of the cost of the work or the
10 maintenance thereof, the department shall ~~lay the matter before the office of the~~
11 ~~commissioner of railroads, and the office of the commissioner of railroads shall~~
12 ~~review the proceedings and hold a hearing thereon in accordance with ss. 195.28 and~~
13 ~~195.29, and shall fix the portion of the cost of the construction and of the maintenance~~
14 ~~which is to be paid by the persons or corporations concerned, and the portion of the~~
15 ~~cost, if any, to be paid by the public, which portion shall be paid from the~~
16 ~~transportation fund. The office of the commissioner of railroads~~ department shall
17 determine the benefits, if any, which will inure to other highways, and apportion and
18 charge to the units of government responsible for the construction of such other
19 highways a fair portion of the cost. If an interested party objects to the department's
20 order under this section and requests a hearing, the department shall refer the order
21 to the division of hearings and appeals for review as provided in s. 195.325. ✓

History: 1977 c. 29 s. 1654 (8) (b), (9) (f); 1981 c. 347 s. 80 (2); 1985 a. 187; 1993 a. 16, 123.

22 **INSERT 8-14:**

23 **SECTION 3.** 86.12 (2) of the statutes is amended to read:

1 86.12 (2) If a railroad company fails to comply with the resolution in sub. (1)
 2 within 30 days after service of the resolution, the county board, common council,
 3 village board or town board may file a complaint with the office department alleging
 4 the failure. The office department shall investigate and determine the matter in
 5 controversy as provided in ch. 195. An order issued by the office department under
 6 this subsection has the same effect as an order in a proceeding brought under ch. 195.

7 History: 1977 c. 29 s. 1654 (10) (b); 1977 c. 72; 1985 a. 29; 1993 a. 16, 123.

SECTION 4. 86.13 (3) of the statutes is amended to read:

8 86.13 (3) If any railroad company fails to grade, construct, pave, surface or
 9 otherwise improve or maintain in good and safe condition for public travel as
 10 required by this section any street or highway crossing after having been notified so
 11 to do by the officer in charge thereof or of the highway improvement for 30 days after
 12 such notification, the highway authorities may file a complaint with the office
 13 department. The office department shall investigate and determine the matter in
 14 controversy as provided in ch. 195. An order issued by the office department under
 15 this subsection has the same effect as an order in a proceeding brought under ch. 195.

16 History: 1977 c. 29; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 137 s. 6; 1993 a. 16, 123, 490; 1999 a. 150 s. 672.

17 **INSERT 14-17:**

18 **SECTION 5.** 190.16 (5) of the statutes is amended to read:

19 190.16 (5) REMOVAL, WHEN. When a spur track has been abandoned, as defined
 20 in s. 85.09, the office department of transportation or the division of hearings and
 21 appeals, after hearing held upon notice to all parties interested and for good cause
 22 shown, may order the removal of the track except that, if no objection has been filed
 23 with the office department of transportation or the division of hearings and appeals
 24 within 20 days from the original notice, the office department of transportation or

1 the division of hearings and appeals may without hearing authorize the removal of
2 the track.

3 **History:** 1973 c. 157; 1977 c. 203; 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 246, 482, 490; 2005 a. 179.

4 **INSERT 16-11:**

department

5 **SECTION 6.** 191.07 of the statutes is amended to read:

6 **191.07 Hearing of applicants; notice.** Upon receiving such application the
7 ~~office~~ department shall set a time and place for a hearing, which time shall not be
8 less than 3 weeks nor more than 8 weeks from the date of filing the application, and
9 the place shall be at the city of Madison, or at some place along the line of the
10 proposed railroad, if the ~~office~~ department deems the latter more convenient, and shall give to the
11 applicant notice thereof, which notice shall be published by the applicant, as a class
12 2 notice, under ch. 985, in each county in which the railroad, extension or branch is
13 proposed to be located, and proof of such publication shall be filed with the ~~office~~
14 department.

15 **History:** 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

15 **SECTION 7.** 191.09 (1) of the statutes is amended to read:

16 **191.09 (1) BEFORE THE OFFICE DEPARTMENT.** The provisions of ch. 195 relating
17 to the subpoenaing of witnesses, the production of books, documents and papers, the
18 administration of oaths, punishment for disobedience of an order of the ~~office of the~~
19 ~~commissioner of railroads~~ department, or of a subpoena, or for refusal of a witness
20 to be sworn or to testify, witness fees, taking depositions, the keeping of a record of
21 the proceedings, the taking of testimony, transcribing the evidence, or relating to the
22 procedure before the ~~office~~ department not inconsistent with this chapter shall apply
23 to all proceedings under this chapter.

24 **History:** 1981 c. 347 ss. 27, 80 (1); 1981 c. 390; 1993 a. 16, 123; 1995 a. 417.

24 **SECTION 8.** 191.09 (2) of the statutes is amended to read:

1 191.09 (2) COURT REVIEW OF ORDERS. Orders of the ~~office~~ department under this
2 chapter shall be subject to review in the manner provided in ch. 227.

3 **History:** 1981 c. 347 ss. 27, 80 (1); 1981 c. 390; 1993 a. 16, 123; 1995 a. 417.

3 **SECTION 9.** 191.10 (1) of the statutes is amended to read:

4 191.10 (1) ISSUANCE, FILING, RECORDING, CONDEMNATION. If the ~~office of the~~
5 ~~commissioner of railroads~~ department finds that the proposed railroad would be a
6 public convenience and that a necessity requires its construction, the ~~office of the~~
7 ~~commissioner of railroads~~ department shall enter an order to that effect and issue
8 to the applicant a certificate that public convenience and a necessity require the
9 construction of the railroad as proposed. The certificate shall be filed in the office of
10 the department of financial institutions and the department of financial institutions
11 shall approve the map showing the route of the railroad. The applicant shall record
12 the map certified by the ~~office of the commissioner of railroads~~ department in the
13 office of the register of deeds in each county in which the railroad shall be located.
14 The filing of the certificate with the department of financial institutions and the
15 recording of the map, as above provided, are conditions precedent to the right of the
16 applicant to institute condemnation proceedings.

17 **History:** 1981 c. 347 ss. 28, 80 (1); 1993 a. 16, 123, 301, 491; 1995 a. 27.

17 **SECTION 10.** 191.10 (2) of the statutes is amended to read:

18 191.10 (2) CERTIFICATE FOR PART OF LINE. Whenever it shall appear to the ~~office~~
19 department that public convenience and a necessity do not require the construction
20 of the railroad as proposed in the application, but do require the construction of a part
21 thereof, the ~~office~~ department may issue a certificate for the construction of such part
22 of the railroad as public convenience and necessity require.

23 **History:** 1981 c. 347 ss. 28, 80 (1); 1993 a. 16, 123, 301, 491; 1995 a. 27.

23 **SECTION 11.** 191.10 (3) of the statutes is amended to read:

1 191.10 (3) REFUSAL OF CERTIFICATE; RENEWAL OF APPLICATION. If the ~~office shall~~
 2 ~~determine~~ department determines that the proposed railroad is not a necessity or is
 3 not required by public convenience, the ~~office~~ department shall by order refuse to
 4 grant a certificate, stating the reasons for the refusal. The application may be
 5 renewed after 2 years from the date of the refusal, but not sooner.

6 **History:** 1981 c. 347 ss. 28, 80 (1); 1993 a. 16, 123, 301, 491; 1995 a. 27.

7 **INSERT 24-9:**

8 **SECTION 12.** 192.29 (4) of the statutes is amended to read:

9 192.29 (4) HIGHWAYS; BELL. No railroad train or locomotive shall run over any
 10 public traveled grade highway crossing outside of the limits of municipalities unless
 11 the engine bell shall be rung continuously from 1,320 feet before the crossing until
 12 the crossing is reached. But the ~~office~~ department may order that the ringing of the
 13 bell as required by this subsection shall be omitted at any crossing.

14 **History:** 1977 c. 29 ss. 1654 (8) (b), (9) (c), 1656 (43); 1977 c. 116; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 95, 179.

14 **SECTION 13.** 192.31 (1) (b) of the statutes is amended to read:

15 192.31 (1) (b) If the ~~office~~ department finds that the absence of a telltale would
 16 create an unreasonable risk of harm to the public or a railroad employee on a railroad
 17 not under the jurisdiction of the federal railroad administration, the ~~office~~
 18 department may enter an order requiring the installation of a telltale. A telltale
 19 shall be ordered by the ~~office~~ department according to the hearing procedure
 20 provided under sub. (4).

21 **History:** 1981 c. 347 s. 80 (1); 1983 a. 192; 1993 a. 16, 123, 482; 2005 a. 179.

21 **INSERT 25-12:**

22 **SECTION 14.** 192.31 (4) of the statutes is amended to read:

23 192.31 (4) Upon finding that any such structure will not imperil life or limb,
 24 and that the public interest requires or permits such structure to be constructed or

1 reconstructed otherwise than as permitted by sub. (3), the office department may
 2 exempt such structure from such provision. Such findings shall be made only upon
 3 written application, setting forth fully the grounds therefor and shall be made only
 4 after public hearing held upon notice to all interested parties except that, if no
 5 objection is filed with the office department within 20 days of the notice, the office
 6 department may require the installation of a telltale without hearing. The findings
 7 and order requiring the installation of a telltale shall be in writing and contain
 8 complete provisions and requirements as to the vertical clearance to be maintained
 9 in such construction or reconstruction. Such structure shall be constructed or
 10 reconstructed only in compliance with such order.

11 **History:** 1981 c. 347 s. 80 (1); 1983 a. 192; 1993 a. 16, 123, 482; 2005 a. 179.

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13 **INSERT 26-17:**

14 (No ff)

14 If an interested party objects to the department's order under this section and
 15 requests a hearing, the department shall refer the order to the division of hearings
 16 and appeals for review as provided in s. 195.325.

17 **INSERT 30-1:**

18 **SECTION 15.** 192.53 (4) (b) of the statutes is amended to read:

19 192.53 (4) (b) The office department shall make the findings described in par.
 20 (a) only upon written application to it to exempt the construction or reconstruction
 21 of a structure from the requirements of this section, setting forth fully the grounds
 22 therefor, and only after public hearing held upon notice to all interested parties
 23 except that, if no objection is filed with the office department within 20 days of the
 24 notice, the office department may authorize the exemption without hearing. The

1 office's department's findings and order granting the exemption shall be in writing
2 and shall contain complete provisions and requirements as to the horizontal
3 clearance to be maintained in the construction or reconstruction. The structure shall
4 be constructed or reconstructed only in compliance with the office's department's
5 order.

6 **History:** 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

INSERT 30-16:

7 **SECTION 16.** 192.53 (6) of the statutes is amended to read:

8 192.53 (6) Any railroad or shipper to which this section applies, who violates
9 any provision of this section or who fails, neglects or refuses to obey any lawful order
10 made by the office department under this section, shall forfeit not less than \$100 nor
11 more than \$200.

12 **History:** 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

SECTION 17. 192.55 (5) of the statutes is amended to read:

13 192.55 (5) Any corporation or person operating a railroad that shall fail to erect
14 the telltales required by s. 192.31 for the space of 60 days after notice from the office
15 department requiring such erection shall forfeit not less than \$50 nor more than
16 \$100, and each 20 days' delay thereafter in erecting such telltales shall be a separate
17 offense.

18 **History:** 1971 c. 306; 1973 c. 154; 1977 c. 155; 1981 c. 347 s. 80 (1); 1983 a. 501; 1993 a. 16, 123; 2005 a. 179.

19 **INSERT 33-3:**

20 **SECTION 18.** 195.03 (7) of the statutes is amended to read:

21 195.03 (7) STUDY RAILROAD AND WATER CARRIER BUSINESS, DEMAND INFORMATION.
22 The office department may inquire into the management of the business of all
23 railroads and water carriers, and shall keep itself informed as to the manner in which
24 the same is conducted, and may obtain from any railroad or water carrier all

1 necessary information to enable the office department to perform the duties and
2 carry out the objects for which it is responsible.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

3 **SECTION 19.** 195.03 (8) of the statutes is amended to read:

4 195.03 (8) QUESTIONNAIRES, ANSWERS COMPULSORY. The office department shall
5 prepare forms for the purpose of obtaining the information which it may deem
6 necessary or useful to the proper exercise of its functions, which shall conform as
7 nearly as practicable to the forms prescribed by the federal railroad administration,
8 federal surface transportation board, or other applicable federal agency or authority,
9 and shall furnish the forms to railroads and water carriers, and every railroad and
10 water carrier receiving the forms shall cause the forms to be properly completed and
11 verified under oath by its proper officer and returned to the office department within
12 the time fixed by the office department.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

13 **SECTION 20.** 195.03 (9) of the statutes is amended to read:

14 195.03 (9) EXAMINE BOOKS AND FILES OF RAILROADS AND WATER CARRIERS. The
15 ~~commissioner of railroads~~ secretary or any person employed by the office department
16 for that purpose shall, upon demand, have the right to inspect the books and papers
17 of any railroad or water carrier and to examine under oath any officer, agent or
18 employee of such railroad or water carrier in relation to its business and affairs;
19 provided that any person other ~~than~~ than the ~~commissioner of railroads~~ secretary
20 who makes such demand shall produce his or her authority under the hand and seal
21 of the office secretary.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

22 **SECTION 21.** 195.03 (10) of the statutes is amended to read:

1 **195.03 (10) PRODUCTION OF RECORDS AND FILES KEPT OUT OF STATE.** The ~~office~~
2 department may, by an order or subpoena to be served in the manner that a circuit
3 court summons is served, require the production within this state, at such time and
4 place as it may designate, of any books, papers or accounts kept by any railroad or
5 water carrier without the state, or verified copies in lieu thereof, if the ~~office~~
6 department shall so order.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

7 **SECTION 22.** 195.03 (11) of the statutes is amended to read:

8 **195.03 (11) UNIFORM SYSTEM OF ACCOUNTING.** The ~~office~~ department may
9 prescribe a uniform system of keeping and rendering accounts of all railroad and
10 water carrier business transacted in this state, and the time within which railroads
11 and water carriers shall adopt such system; provided that all forms of accounts which
12 may be prescribed by the ~~office~~ department shall conform to any applicable
13 requirement under 49 USC 11141 to 11164 or 49 CFR 1201 and, as nearly as
14 practicable, to similar forms prescribed by federal authority.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

15 **SECTION 23.** 195.03 (12) of the statutes is amended to read:

16 **195.03 (12) TIME FOR FILING WATER CARRIER RATE TARIFFS.** The ~~office~~ department
17 shall fix the time for filing water carrier schedules relative to the transportation of
18 passengers and property and of any service in connection therewith.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

19 **SECTION 24.** 195.03 (13) of the statutes is amended to read:

20 **195.03 (13) SCHEDULE FORMS.** The ~~office~~ department may prescribe the forms
21 for water carrier schedules.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

22 **SECTION 25.** 195.03 (14) of the statutes is amended to read:

1 195.03 (14) PASSES TO SHIPPERS. The office department may prescribe
2 regulations for free transportation of attendants upon shipments of livestock.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

3 **SECTION 26.** 195.03 (15) of the statutes is amended to read:

4 195.03 (15) ELEVATORS AND WAREHOUSES. The office department may prescribe
5 rules and regulations covering the charges and manner of conducting the business
6 of public elevators and warehouses upon railroad ground.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

7 **SECTION 27.** 195.03 (16) of the statutes is amended to read:

8 195.03 (16) CAR SERVICE. The office department may make reasonable
9 regulations for furnishing cars to shippers, and for moving, loading and unloading
10 cars and for weighing cars and freight, and to test railroad weights and scales used
11 in weighing freight or cars.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

12 **INSERT 35-1:**

13 **SECTION 28.** 195.03 (19) of the statutes is amended to read:

14 195.03 (19) RAILROAD AND WATER CARRIER STRUCTURES. The office department
15 may order the repair or reconstruction of any inadequate or unsafe railroad track or
16 water carrier structure.

History: 1971 c. 215, 306; 1977 c. 29 ss. 1325, 1328 to 1333, 1654 (9) (e); 1979 c. 34; 1981 c. 347 ss. 70, 80 (1); 1981 c. 391; 1993 a. 16, 123, 490; 2001 a. 14, 107; 2005 a. 179.

17
18 **INSERT 36-3:**

19 **SECTION 29.** 195.04 (1) of the statutes is amended to read:

20 195.04 (1) Upon complaint of any person, including any state agency, water
21 carrier, or railroad, either relating to a railroad as provided under s. 192.324, 192.34,
22 195.20, 195.28 (1), 195.285 (1), 195.29 (1), (5), or (6), 195.31, or 195.32 or that any

1 water carrier rate, fare, charge, or classification or any regulation or practice
2 whatever affecting the transportation of persons or property, or any service in
3 connection therewith, is in any respect unreasonable or unjustly discriminatory or
4 that any service is inadequate, the office department may investigate the complaint
5 and shall set the complaint for hearing. No order may be entered by the office
6 department without a public hearing, except as otherwise provided in this chapter.

7 **History:** 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

SECTION 30. 195.04 (2) of the statutes is amended to read:

8 195.04 (2) The office department shall, prior to any hearing, notify the water
9 carrier or railroad complained of that a complaint has been made, and 20 days after
10 such notice has been given the office department may proceed to set a time and place
11 for a hearing.

12 **History:** 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

SECTION 31. 195.04 (3) of the statutes is amended to read:

13 195.04 (3) The office department shall give the water carrier or railroad and
14 the complainant 20 days' notice of the hearing and the matters to be considered and
15 determined. Both the water carrier or railroad and the complainant shall be entitled
16 to be heard and shall have process to enforce the attendance of witnesses.

17 **History:** 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

SECTION 32. 195.041 of the statutes is amended to read:

18 **195.041 Separate rate hearings; absence of direct damage.** The office
19 department may, when complaint is made of more than one water carrier rate or
20 charge, order separate hearings thereon, and may consider and determine the
21 several matters complained of separately and at such times as it may prescribe. No
22 complaint shall at any time be dismissed because of the absence of direct damage to
23 the complainant.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

1 **SECTION 33.** 195.042 of the statutes is amended to read:

2 **195.042 Summary investigations.** Whenever the ~~office~~ department believes
3 that any water carrier rate or charge may be unreasonable or unjustly
4 discriminatory or that any service is inadequate or cannot be obtained or that an
5 investigation of any matter relating to any water carrier or, if a matter arising under
6 s. 192.324, 192.34, 195.20, 195.28 (1), 195.285 (1), 195.29 (1), (5), or (6), 195.31, or
7 195.32, to any railroad should for any reason be made, it may investigate the same
8 with or without notice.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

9 **SECTION 34.** 195.043 (1) of the statutes is amended to read:

10 **195.043 (1)** If, after summary investigation, the ~~office~~ department becomes
11 satisfied that sufficient grounds exist to warrant a formal hearing being ordered as
12 to the matters investigated, it shall set a time and place for a hearing. The ~~office~~
13 department shall publish notice of any such investigation in its weekly calendar and
14 any report and all matters considered by the ~~office~~ department with respect thereto
15 shall be available for public inspection upon request.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

16 **SECTION 35.** 195.043 (2) of the statutes is amended to read:

17 **195.043 (2)** Notice of the time and place for such hearing shall be given to the
18 water carrier or railroad, and to such other interested persons as the ~~office~~
19 department deems necessary, as provided in s. 195.04, and thereafter proceedings
20 shall be had and conducted in reference to the matter investigated in like manner
21 as though complaint had been filed with the ~~office~~ department relative to the matter
22 investigated, and the same order or orders may be made in reference thereto as if
23 such investigation had been made on complaint.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

24 **SECTION 36.** 195.044 (1) of the statutes is amended to read:

1 195.044 (1) Each witness who appears before the office department or its agent,
2 by its order, shall receive for attendance the fees and mileage now provided for
3 witnesses in civil cases in courts of record, which shall be audited and paid by the
4 state in the same manner as other expenses are audited and paid, upon the
5 presentation of proper vouchers sworn to by such witnesses and approved by the
6 office department. Said fees and mileage shall be charged to the appropriation for
7 the office department.

8 History: 1977 c. 29, 273; 1981 c. 347 ss. 71, 80 (1); 1993 a. 16, 123.

8 **SECTION 37.** 195.044 (2) of the statutes is amended to read:

9 195.044 (2) No witness subpoenaed at the instance of parties other than the
10 office department is entitled to compensation from the state for attendance or travel
11 unless the office department certifies that the witness' testimony was material to the
12 matter investigated.

13 History: 1977 c. 29, 273; 1981 c. 347 ss. 71, 80 (1); 1993 a. 16, 123.

13 **SECTION 38.** 195.045 of the statutes is amended to read:

14 **195.045 Depositions.** The office department or any party may in any hearing
15 cause the depositions of witnesses residing within or without the state to be taken
16 in the manner prescribed by law for like depositions in civil actions in circuit courts.
17 Any expense incurred or authorized by the office department in taking such
18 depositions shall be charged to the appropriation for the office department.

19 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

19 **SECTION 39.** 195.046 of the statutes is amended to read:

20 **195.046 Record.** A full and complete record shall be kept of all proceedings
21 before the ~~office or its hearing examiners~~ department.

22 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

22 **SECTION 40.** 195.05 (title) of the statutes is amended to read:

1 **195.05** (title) ~~Office; water~~ Water carrier rates, regulations, service,
2 **procedure.**

3 History: 1981 c. 347 s. 80 (1); 1985 a. 187; 1993 a. 16, 123; 2005 a. 179.

3 **SECTION 41.** 195.05 (1) of the statutes is amended to read:

4 **195.05 (1) ORDERS FOR RATES AND SERVICE.** Whenever the ~~office~~ department shall
5 find that any existing water carrier rate, fare, charge, or classification, or any joint
6 rate, or any regulation or practice affecting the transportation of persons or property,
7 or any service in connection therewith is unreasonable or unjustly discriminatory or
8 that any service is inadequate, it shall determine and by order fix a reasonable rate,
9 fare, charge, classification, joint rate, regulation, practice or service to be imposed,
10 observed and followed in the future, in lieu of that found to be unreasonable or
11 unjustly discriminatory or inadequate.

12 History: 1981 c. 347 s. 80 (1); 1985 a. 187; 1993 a. 16, 123; 2005 a. 179.

12 **SECTION 42.** 195.05 (2) of the statutes is amended to read:

13 **195.05 (2) TIME TO COMPLY WITH ORDERS.** Where the order made relates to
14 service, and the same cannot, in the judgment of the ~~office~~ department, be complied
15 with within 20 days, the ~~office~~ department may prescribe such additional time as in
16 its judgment is reasonably necessary to comply with the order and may on
17 application and for good cause shown further extend the time.

18 History: 1981 c. 347 s. 80 (1); 1985 a. 187; 1993 a. 16, 123; 2005 a. 179.

18 **SECTION 43.** 195.05 (4) of the statutes is amended to read:

19 **195.05 (4) MODIFICATION OF ORDERS.** The ~~office~~ department may by order at any
20 time, upon notice to the water carrier and after opportunity to be heard, rescind, alter
21 or amend any order fixing any rate or rates, fares, charges or classification, or any
22 other order made by the ~~office~~ department.

23 History: 1981 c. 347 s. 80 (1); 1985 a. 187; 1993 a. 16, 123; 2005 a. 179.

23

1 **INSERT 36-16:**

2 **SECTION 44.** 195.06 of the statutes is amended to read:

3 **195.06 Office Department orders prima facie lawful.** All orders,
4 determinations and decisions made by the office department shall be in force and
5 effective 20 days after the same has been served as required by s. 227.48 unless the
6 office department shall specify a different date upon which the same shall be
7 effective, and shall be prima facie lawful, and all regulations, practices and service
8 prescribed by the office department shall be in force and shall be prima facie lawful
9 and reasonable, until finally found otherwise upon review thereof by the division of
10 hearings and appeals under s. 195.325 and ch. 227 or upon judicial review thereof
11 instituted pursuant to ch. 227.

History: 1975 c. 414 s. 28; 1981 c. 347 s. 80 (1); 1985 a. 182 s. 57; 1993 a. 16, 123.

12 **SECTION 45.** 195.07 (1) of the statutes is amended to read:

13 **195.07 (1) POWERS.** The office department shall inquire into the neglect or
14 violation of the laws of this state by water carriers and railroads, or by the officers,
15 agents or employees thereof, or by persons operating water carriers and railroads,
16 and shall report violations to the attorney general.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1985 a. 29; 1993 a. 16, 123; 2005 a. 179.

17 **SECTION 46.** 195.07 (2) of the statutes is amended to read:

18 **195.07 (2) ATTORNEY GENERAL AND DISTRICT ATTORNEY TO PROSECUTE.** Upon
19 request of the office department, the attorney general or the district attorney of the
20 proper county shall aid in any investigation, hearing or trial had under, and shall
21 institute and prosecute all necessary actions or proceedings for the enforcement of,
22 laws relating to water carriers and railroads.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1985 a. 29; 1993 a. 16, 123; 2005 a. 179.

23 **SECTION 47.** 195.08 (2) of the statutes is amended to read:

1 195.08 (2) SCHEDULES; PUBLICATION. Every water carrier shall print in plain
 2 type and file with the office department schedules which shall be open to public
 3 inspection showing all rates, fares and charges for the transportation of passengers
 4 and property and any service in connection therewith which it has established and
 5 which are in force at the time between all points in this state upon its line or any line
 6 controlled or operated by it. The schedules shall plainly state the places upon its line
 7 or any line controlled or operated by it in this state between which passengers and
 8 property will be carried, and there shall be filed therewith the classification of freight
 9 in force.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1999 a. 83; 2005 a. 179.

10 **SECTION 48.** 195.08 (7) of the statutes is amended to read:

11 195.08 (7) CHANGES IN SCHEDULE. No change shall be made in any schedule, or
 12 in any classification, unless the change shall be plainly indicated upon existing
 13 schedules, or by filing new schedules in lieu thereof, 30 days prior to the time the
 14 same are to take effect. Copies of all new schedules shall be filed as required in this
 15 section in every terminal and office of such water carrier at places to or from which
 16 the rates in such schedules apply, 30 days prior to the time the same are to take effect,
 17 unless the office department shall prescribe a less time.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1999 a. 83; 2005 a. 179.

18 **SECTION 49.** 195.08 (9) of the statutes is amended to read:

19 195.08 (9) COMPLAINT AGAINST CHANGE IN SCHEDULES. Whenever a complaint is
 20 filed with the office department before any change in any water carrier schedule, or
 21 in any classification, rule, regulation or practice becomes effective to the effect that
 22 the change is unreasonable or unjustly discriminatory, the office department shall
 23 give notice to the water carrier that a complaint has been made, may investigate the
 24 complaint and shall set the complaint for hearing. The office department may, in its

1 discretion, by order, stay the change pending the determination of the matters
2 investigated at any time before the change shall take effect. If the change
3 complained of is found unreasonable or unjustly discriminatory, the change shall not
4 take effect and, if the change has become effective, the office department shall order
5 the discontinuance thereof. The office department may fix and order substituted for
6 any such change such rates, joint rates, fares, charges, classification, rule,
7 regulation, practice or service as it shall have determined to be just and reasonable
8 and which shall be charged, imposed or followed in the future, and shall make such
9 order respecting such rule, regulation, practice or service as it shall determine to be
10 reasonable and which shall be observed and followed in the future. Procedure and
11 notice shall be as provided in s. 195.04 (2) to (4).

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1999 a. 83; 2005 a. 179.

12 **SECTION 50.** 195.10 of the statutes is amended to read:

13 **195.10 Emergency rates.** The office department shall have power, when
14 deemed by it necessary to prevent injury to the business or interests of the people or
15 water carriers of this state in consequence of any emergency to be judged of by the
16 office department, to temporarily alter, amend, or, with the consent of the water
17 carrier company concerned, suspend any existing passenger rates, freight rates,
18 schedules and orders on any water carrier in this state. Such rates so made by the
19 office department shall apply on one or more of the water carriers in this state or any
20 portion thereof as may be directed by the office department, and shall take effect at
21 such time and remain in force for such length of time as may be prescribed by the
22 office department.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

23 **SECTION 51.** 195.15 of the statutes is amended to read:

1 **195.15 Transportation contracts, filed.** Every water carrier shall, when
 2 required and within the time fixed by the office department, deliver to the office
 3 department for its use copies of all contracts which relate to the transportation of
 4 persons or property, or any service in connection therewith, made or entered into by
 5 it with any other water carrier or any shipper or other person doing business with
 6 it.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

7 **SECTION 52.** 195.16 of the statutes is amended to read:

8 **195.16 Pass lists.** Every water carrier shall keep and for 2 years preserve a
 9 record of every ticket, pass or mileage book issued to a resident of this state free or
 10 for a money consideration less than that charged the general public. Such record
 11 shall consist of the name of the recipient, the amount received, and the reason for
 12 issuance, and shall be open to inspection by the office department upon reasonable
 13 notice during such period of 2 years.

History: 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

14

15 **INSERT 39-14:**

16 **SECTION 53.** 195.26 of the statutes is amended to read:

17 **195.26 Safety devices; block system.** Every railroad and water carrier shall
 18 adopt reasonably adequate safety measures and install, operate and maintain
 19 reasonably adequate safety devices for the protection of life and property to the
 20 extent consistent with federal law. If after investigation the office department shall
 21 determine that public safety requires it, the office department may, if permitted
 22 under federal law, order a railroad to install, operate and maintain a block system
 23 or order a railroad or water carrier to install, operate, and maintain any other safety

1 device or measure as may be necessary to render the operation of the railroad or
2 water carrier reasonably safe.

3 History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

3 **SECTION 54.** 195.28 (1) of the statutes is amended to read:

4 195.28 (1) PETITION; HEARING; ORDER. Upon petition of ~~the department, city a~~
5 city council, village board, town board, superintendent of highways or by 5 or more
6 electors in any town, village or city, or of any railroad corporation or railroad
7 historical society, to determine whether a public highway and railroad grade crossing
8 protects and promotes public safety, or upon its own motion, ~~the office~~ department
9 may investigate and issue an appropriate order without a public hearing. If the
10 petitioner, railroad, railroad historical society or any interested party objects to the
11 order and requests a hearing within 20 days after the date that the order is issued,
12 ~~the office~~ department shall proceed under s. 195.04. ~~Notice of an investigation or~~
13 ~~hearing shall be served upon the department, which shall be an interested party, and~~
14 ~~any recommendation it may file with the office at or prior to a hearing, if there is one,~~
15 ~~regarding crossing protection shall be considered as evidence in the proceeding.~~ The
16 office department shall determine whether the existing warning devices at such
17 crossing are adequate to protect and promote public safety. If the office department
18 determines, either without or after a hearing, that protection is not adequate, it may
19 order the railroad company or railroad historical society to keep a flagman at the
20 crossing or to install automatic signals or other suitable safety device at specific
21 locations at such crossing. The office department may order the relocation of existing
22 signals and devices to improve protection at a crossing. Any crossing protection
23 installed or maintained as approved by the office department, whether by order or
24 otherwise, shall be deemed adequate and appropriate protection for the crossing. If

1 an interested party objects to the department's order and requests a hearing, the
 2 department shall refer the matter to the division of hearings and appeals for review
 3 as provided in s. 195.325.

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1979 c. 34; 1981 c. 20 ss. 1504, 2202 (51) (c); 1981 c. 347 s. 80 (1); 1985 a. 29 s. 3202 (51); 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 123; 1997 a. 135; 2005 a. 179, s. 24.

4 **SECTION 55.** 195.28 (1m) of the statutes is amended to read:

5 195.28 (1m) ARTERIAL STOP SIGNS. In any proceeding under sub. (1), the office
 6 department may by order require that the state or municipality install at any
 7 crossing involved in such proceeding an official stop sign.

History: 1973 c. 155; 1973 c. 243 s. 82; 1975 c. 135; 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1979 c. 34; 1981 c. 20 ss. 1504, 2202 (51) (c); 1981 c. 347 s. 80 (1); 1985 a. 29 s. 3202 (51); 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16, 123; 1997 a. 135; 2005 a. 179, s. 24.

8 **INSERT 42-5:**

9 **SECTION 56.** 195.285 (1) of the statutes is amended to read:

10 195.285 (1) Upon the petition of a railroad corporation, ~~the department,~~ or the
 11 governing body of any city, village, town or county asserting that the stopping of
 12 vehicles under s. 346.45 at a railroad crossing is hazardous to human life, or upon
 13 its own motion, ~~the office~~ department shall hold a hearing on the matter as provided
 14 under s. 195.04. ~~Notice of petition shall be served upon the department, which shall~~
 15 ~~be an interested party, and any recommendations it may file with the office regarding~~
 16 ~~the hazardous effect of vehicles stopping at such crossings shall be considered as~~
 17 ~~evidence in the proceedings. Upon the recommendation of the department and~~
 18 ~~concurrence by the office, the petition may be dismissed without holding a hearing.~~

19 If, upon the public hearing, the ~~office~~ department determines that it would be in the
 20 public interest to exempt vehicles specified in s. 346.45 from stopping at such grade
 21 crossing, it may order the public body having jurisdiction over the highway to erect
 22 signs, signals, markings or other devices exempting such vehicles from stopping at
 23 the crossing. If an interested party objects to the department's order and requests

1 a hearing, the department shall refer the matter to the division of hearings and
2 appeals for review as provided in s. 195.325.

3 **History:** 1975 c. 63; 1977 c. 29 ss. 1654 (8) (a), (9) (f), 1656 (43); 1981 c. 347 s. 80 (1), (2); 1985 a. 29; 1993 a. 16, 123.

4 **INSERT 43-9:**

5 **SECTION 57.** 195.286 (2) of the statutes is amended to read:

6 195.286 (2) SIGNS DESCRIBED. Such signs shall be round and of a size, color and
7 message as specified by the department ~~and approved by the office.~~ Any change in
8 these signs shall not be retroactive.

9 **History:** 1977 c. 29 ss. 1301, 1654 (8) (b), (9) (e); 1977 c. 272; Stats. 1977 s. 195.286; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 95, 179.

9 **SECTION 58.** 195.286 (5) of the statutes is amended to read:

10 195.286 (5) OTHER SIGNS PROHIBITED. No other sign of the general size or
11 appearance of the signs provided for in this section shall be placed or permitted upon
12 any highway, nor any sign between such advance signs except signs or signals
13 required by law or permitted by the ~~office~~ department for protection at railway
14 crossings.

15 **History:** 1977 c. 29 ss. 1301, 1654 (8) (b), (9) (e); 1977 c. 272; Stats. 1977 s. 195.286; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 95, 179.

16 **INSERT 44-4:**

17 **SECTION 59.** 195.29 (1) of the statutes is amended to read:

18 195.29 (1) PETITION, HEARING, ORDER. Upon petition by the common council or
19 board of any city, village, town or county within or bordering upon which a highway
20 or street crosses a railroad, or a highway or street is proposed to be laid out across
21 a railroad, or a public highway bridge across a railroad is required to connect existing
22 streets or highways, or upon petition by any railroad whose track crosses or is about
23 to cross, or is crossed or about to be crossed by a street or highway, or upon petition
24 ~~by the department~~ its own motion, in cases where provision has been made for the

1 improvement of the highway adjacent to such crossing under any state aid or federal
2 aid law, that public safety requires an alteration in such crossing, its approaches, the
3 method of crossing, the location of the highway or crossing, or the closing of the
4 crossing, and the substitution of another therefor at grade or not at grade, or the
5 removal of obstructions to the view at such crossing, the relocation of the highway,
6 or requires the determination of the manner of making such new crossing, or of
7 making the proposed improvement or promoting the public safety or public
8 convenience through any other reasonable method, and praying that the same may
9 be ordered, the ~~office~~ department shall give notice to the parties in interest and
10 proceed to investigate the same and to order a hearing thereon in the manner
11 provided by s. 195.04. The ~~office~~ department shall determine what, if anything, shall
12 be done to promote the public safety and the means by which it shall be accomplished,
13 whether by the relocation of the highway, the alteration in such crossing, approaches,
14 mode of crossing, location of highway crossing, closing of highway crossing, with or
15 without the substitution of another therefor, the construction of a public highway
16 bridge, the removal of obstructions to sight at crossing, or by the use of other
17 reasonable methods, and by whom the same shall be made, and in case of new
18 crossings the advisability of allowing such crossings to be established and manner
19 of making them. If an interested party objects to the department's order and requests
20 a hearing, the department shall refer the matter to the division of hearings and
21 appeals for review as provided in s. 195.325.

22 History: 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2003 a. 33.

23 **INSERT 47-9:**

24 **SECTION 60.** 195.29 (5) of the statutes is amended to read:

1 195.29 (5) ELIMINATION OF GRADE CROSSINGS, COSTS. Upon its own motion or upon
2 petition of the ~~department, or of the~~ common council or board of any city, village,
3 town, or county, alleging that one or more of them have undertaken or propose to
4 undertake to relocate or improve an existing highway or to construct a new highway
5 in such manner as to eliminate a highway grade crossing with any railroad or so as
6 to permanently divert a material portion of the highway traffic from a highway grade
7 crossing with any railroad, the ~~office~~ department shall issue notice of investigation
8 and hearing, as provided in s. 195.04. If upon such hearing the ~~office~~ department
9 finds that the public safety will be promoted by the highway relocation,
10 improvement, or new construction, the ~~office~~ department shall order the old
11 crossings closed and new crossings opened as are deemed necessary for public safety.
12 The order shall require the railroad company or companies to pay to the interested
13 municipality or municipalities such sum as the ~~office~~ department finds to be an
14 equitable portion of the cost of the highway relocation, improvement, or new
15 construction, if the work is performed by the municipalities; or to the secretary of
16 administration if the work is performed by the state; or to the proper county
17 treasurer if the work is performed by the county. The sum shall be added to the joint
18 fund available for the improvement and may be expended in like manner as the other
19 portions of the fund.

History: 1977 c. 29 ss. 1654 (8) (b), 1656 (43); 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2003 a. 33.

20

INSERT 53-18

21 **SECTION 61.** 195.30 (1) of the statutes is amended to read:

22 195.30 (1) Upon its own motion or upon a petition by the common council of any
23 city, or the board of any village, town or county within which a railroad crosses
24 another railroad at grade, or by any such railroad, that public safety requires an

1 alteration in the crossing or the installation of protective appliances, the office
2 department shall give notice to the parties in interest, and proceed to investigate the
3 same and may order a hearing on the matter. The office department shall determine
4 what alteration in such crossing, if any, shall be made, and by whom made and
5 maintained, or what protective appliances shall be installed, operated and
6 maintained at the crossing and by whom installed, operated and maintained. The
7 office department shall fix the proportion of the cost and expense of such change in
8 grade and maintenance of the crossing or of the installation, operation and
9 maintenance of the safety appliance which shall be paid by the railroad companies,
10 respectively. If an interested party objects to the department's order and requests
11 a hearing, the department shall refer the matter to the division of hearings and
12 appeals for review as provided in s. 195.325.

13 **History:** 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

14 **SECTION 62.** 195.31 of the statutes is amended to read:

15 **195.31 Bridges made safe.** Whenever a complaint is lodged with the office
16 department by the common council of any city, the village board of any village, a
17 member of a town board, or a supervisor of highways, or by 5 or more electors and
18 taxpayers in any town, or 5 or more electors of the county in which such bridge is
19 located, and who are users of such bridge or railway, to the effect that a bridge erected
20 over a stream intersecting a public highway or highways upon which a railway is
21 constructed and operated, is unsafe and dangerous to travelers over such highway
22 or highways or bridge or railroad, and that public safety requires the alteration, the
23 repair or reconstruction of such bridge, or the substitution of another bridge therefor,
24 it shall be the duty of the office department to give notice to the party or parties in

1 interest, other than the petitioners, of the filing of such complaint, and to furnish a
 2 copy of the complaint to the party or parties in interest other than the petitioners,
 3 and to order a hearing thereon, in the manner provided for hearings in ss. 195.04 to
 4 195.043. The office department may proceed in a similar manner in the absence of
 5 a petition when, in the opinion of the office department, public safety requires the
 6 alteration, repair or reconstruction of a bridge or the substitution of another bridge
 7 for the bridge in question. After the hearing, the office department shall determine
 8 what alteration or repair or reconstruction of such bridge, and the approaches
 9 thereto, shall be made, or if it shall determine that public safety requires the
 10 substitution of a new bridge, it shall determine the character, manner of construction
 11 and location of such bridge and the approaches thereto. The office department shall
 12 fix the proportion of the cost and expense of such alteration, repair, reconstruction
 13 or substitution of a new bridge, including the damage to any person whose land is
 14 taken, and the special damage which the owner of any land adjoining the approaches
 15 to said bridge shall sustain by reason of the alteration, repair, reconstruction or
 16 substitution of a new bridge, to be paid by the railroad company and the city, village
 17 or town in interest. If an interested party objects to the department's order under this
 18 section and requests a hearing, the department shall refer the matter to the division
 19 of hearings and appeals for review as provided in s. 195.325.

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

SECTION 63. 195.32 of the statutes is amended to read:

21 **195.32 Safety gates on drawbridges.** Whenever a complaint is filed with
 22 the office department to the effect that any drawbridge is not equipped with gates
 23 or other safety devices, the office department may notify the proper party or parties
 24 in interest of the complaint, and may proceed to investigate the complaint and to hold

1 a hearing on the matter in the manner provided for hearings in ss. 195.04 to 195.043.
 2 If after the investigation the office department determines that public safety
 3 requires the erection and maintenance of gates or other safety devices at the points
 4 mentioned in the complaint, it may order the county, city, village, town, corporation
 5 or person whose duty it is to maintain such bridge to erect and maintain at such
 6 points such gates or other safety devices as the office department prescribes. The
 7 office department may conduct the investigations, hold the hearings and make the
 8 orders provided for in this section upon its own motion in the same manner and with
 9 the same effect as though a complaint were filed. If an interested party objects to the
 10 department's order under this section, the department shall refer the order to the
 11 division of hearings and appeals for review as provided in s. 195.325.

*End
INSERT
53-18*

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

*INSERT
60-20*

SECTION 64. 195.34 of the statutes is amended to read:

12 **195.34 Reports of accidents, investigation.** Every water carrier shall
 13 report to the office department all accidents resulting in injury to persons arising
 14 from its operation. The office department may issue rules concerning the reporting
 15 of accidents by water carriers and may also, if public interests require, cause an
 16 investigation of any accident. Every railroad shall submit to the office department
 17 a copy of any accident or injury report provided by the railroad to the applicable
 18 federal authority for all collisions, derailments or other accidents resulting in injury
 19 to persons, equipment, or roadway arising from its operation. The office department
 20 may issue rules concerning the submission of copies of federal reports under this
 21 section and may also, to the extent permitted by federal law, participate in any
 22 accident investigation.
 23

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

24 **SECTION 65.** 195.36 of the statutes is amended to read:

1 **195.36 General penalty upon railroads and water carriers.** If any
2 railroad or water carrier shall violate any provision of this chapter, or shall do any
3 act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, for
4 which a penalty has not been provided, or shall fail, neglect or refuse to obey any
5 lawful requirement or order made by the office department, or any judgment or
6 decree made by any court upon its application, for every such violation, failure or
7 refusal in respect to any matter prescribed by this chapter such railroad or water
8 carrier shall forfeit not less than \$100 nor more than \$10,000. The act, omission or
9 failure of any officer, agent or other person employed by any railroad or water carrier,
10 acting within the scope of his or her employment, shall be deemed to be the act,
11 omission or failure of such railroad or water carrier.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

12 **SECTION 66.** 195.37 (1) of the statutes is amended to read:

13 **195.37 (1) COMPLAINTS, INVESTIGATIONS, HEARINGS, FINDINGS, REFUND.** The office
14 department may investigate the complaint of any person aggrieved that the charge
15 exacted by a water carrier for the transportation of property between points in this
16 state, or for any service in connection with transportation of property, or that the
17 charge exacted by a water carrier for the storage of such property, or that any charge
18 exacted by a water carrier is erroneous, illegal, unusual or exorbitant and shall set
19 the complaint for hearing as provided in s. 195.04 (2) to (4). If the office department
20 finds that the rate or charge exacted by a water carrier is erroneous, illegal, unusual
21 or exorbitant, it shall find what would have been a reasonable rate or charge for such
22 service. If the rate or charge so found is less than the charge exacted, the carrier shall
23 refund the excess. If an interested party objects to the department's order under this

1 section, the department shall refer the order to the division of hearings and appeals
2 for review as provided in s. 195.325.

3 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

3 **SECTION 67.** 195.37 (2) of the statutes is amended to read:

4 195.37 (2) ACTIONS; FINDINGS AS EVIDENCE, DEFENSES. In an action to recover the
5 amount of such excess charge, the findings of the ~~office~~ department shall be prima
6 facie evidence of the truth of the facts found by it, and no carrier shall be permitted
7 to avail itself of the defense that the shipment involved was in fact made on the
8 published tariff rate in force at the time such shipment was made, but no carrier
9 making a refund upon the order of the ~~office~~ department or the judgment of a court
10 shall be liable for any penalty or subject to any prosecution on account of making such
11 refund.

12 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

12 **SECTION 68.** 195.37 (3) of the statutes is amended to read:

13 195.37 (3) LIMITATION FOR FILING CLAIM. All complaints provided for in sub. (1),
14 except those for straight overcharges, shall be filed with the ~~office~~ department within
15 2 years after delivery of the shipment of property at destination, subject to sub. (6).

16 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

16 **SECTION 69.** 195.37 (4) (a) of the statutes is amended to read:

17 195.37 (4) (a) In this subsection, "straight overcharge" means a charge in
18 excess of those applicable under the lawful tariffs on file with the ~~office~~ department.

19 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

19 **SECTION 70.** 195.38 of the statutes is amended to read:

20 **195.38 Water carrier freight bills; examination; refunds.** Within 3 years
21 after the delivery of any shipment of property at destination by a water carrier, any
22 person, firm or corporation may submit to the ~~office~~ department, by mail or in person,
23 any water carrier expense bill or receipt showing charges paid for transportation of

1 such property by freight for the purpose of having the expense bill or receipt
2 examined with respect to the correctness of weights, rates and charges indicated
3 thereon. Upon receipt of any such expense bill or receipt, the office department may
4 make such examination as is necessary, and if it is found that any such weights, rates
5 or charges are incorrect, the office department shall order the water carrier in error
6 to refund to the person, firm or corporation which submitted such expense bills or
7 receipts, any over or excessive charges paid by such person, firm or corporation. If
8 an interested party objects to the department's order under this section, the
9 department shall refer the order to the division of hearings and appeals for review
10 as provided in s. 195.325.

11 **History:** 1977 c. 29; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

11 **SECTION 71.** 195.45 (1) of the statutes is amended to read:

12 195.45 (1) No person shall operate as a common carrier of passengers or
13 property by water except in accordance with the terms and conditions of a certificate
14 of public convenience and necessity issued by the office department. The office
15 department shall issue any certificate upon a finding that the service proposed to be
16 performed is in the public interest and required by public convenience and necessity.

17 **History:** 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

17 **SECTION 72.** 195.45 (2) of the statutes is amended to read:

18 195.45 (2) Application for the certificate shall be made on forms furnished by
19 the office department and shall contain such information as the office department
20 requires.

21 **History:** 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

21 **SECTION 73.** 195.45 (4) of the statutes is amended to read:

22 195.45 (4) The office department may promulgate rules for the operation of this
23 section.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

1 **SECTION 74.** 195.50 (1) of the statutes is amended to read:

2 195.50 (1) Any officer, agent or employee of any railroad or water carrier who
3 fails to fill out and return any forms required by this chapter, or fails to answer any
4 question therein, or knowingly gives a false answer to any such question, or evades
5 the answer to any such question where the fact inquired of is within his or her
6 knowledge, or who, upon proper demand, fails to exhibit to the ~~office or~~ department
7 or the division of hearings and appeals or any person authorized to examine the
8 same, any book, paper, account, record or memoranda of such railroad or water
9 carrier which is in the possession or under control of the officer, agent or employee,
10 or who fails to properly use and keep the system of accounting prescribed by the ~~office~~
11 department, or who refuses to do any act or thing in connection with such system of
12 accounting when so directed by the ~~office or its~~ department, the division of hearings
13 and appeals, or their authorized representatives, shall forfeit not less than \$100 nor
14 more than \$1,000 for each offense.

History: 1977 c. 29, 273; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 2005 a. 179.

15 **SECTION 75.** 195.60 (title) of the statutes is amended to read:

16 **195.60 (title) Payment of ~~office~~ department expenses by railroads and**
17 **water carriers.**

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

18 **SECTION 76.** 195.60 (1) of the statutes is amended to read:

19 195.60 (1) Whenever the ~~office~~ department in a proceeding upon its own
20 motion, on complaint, or upon an application to it deems it necessary in order to carry
21 out the duties imposed upon it by law to investigate the books, accounts, practices
22 and activities of, or make appraisals of the property of any railroad or water carrier
23 or to render any engineering or accounting services to any railroad or water carrier,
24 the railroad or water carrier shall pay the expenses attributable to such

1 investigation, appraisal or service. The office department shall ascertain such
 2 expenses, and shall render a bill therefor, by mail, to the railroad or water carrier,
 3 either at the conclusion of the investigation, appraisal or services, or during its
 4 progress. The bill shall constitute notice of assessment and demand of payment
 5 thereof. The railroad or water carrier shall, within 30 days after the mailing thereof,
 6 pay to the office department the amount of the special expense for which it is billed.
 7 Ninety percent of the payment shall be deposited in the general fund and credited
 8 to the appropriation account under s. ~~20.155 (2) (g)~~ 20.395 (2) (gg). The total amount,
 9 in any one calendar year, for which any railroad or water carrier becomes liable, by
 10 reason of costs incurred by the office department within such calendar year, shall not
 11 exceed four-fifths of one percent of its gross operating revenues derived from
 12 intrastate operations in the last preceding calendar year. Where, under this
 13 subsection, costs are incurred within any calendar year, which are in excess of
 14 four-fifths of one percent of such gross operating revenues, the excess costs shall not
 15 be chargeable as part of the remainder under sub. (2) but shall be paid out of the
 16 general appropriation to the office department. Nothing in this subsection shall
 17 prevent the office department from rendering bills in one calendar year for costs
 18 incurred within a previous year. For the purpose of calculating the costs of
 19 investigations, appraisals and other services under this subsection, 90 percent of the
 20 costs determined shall be costs of the office department and 10 percent of the costs
 21 determined shall be costs of other state government operations.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

22 **SECTION 77.** 195.60 (2) of the statutes is amended to read:

23 195.60 (2) The office department shall annually, within 90 days after the close
 24 of each fiscal year, ascertain the total of its expenditures during such year which are

1 reasonably attributable to the performance of its duties relating to railroads and
 2 water carriers. For purposes of such calculation, 90 percent of the expenditures so
 3 determined shall be expenditures of the office department and 10 percent of the
 4 expenditures so determined shall be expenditures for other state government
 5 operations. The office department shall deduct therefrom all amounts chargeable to
 6 railroads and water carriers under sub. (1) and s. 201.10 (3). A sum equal to the
 7 remainder plus 10 percent of the remainder shall be assessed by the office
 8 department to the several railroads and water carriers in proportion to their
 9 respective gross operating revenues during the last calendar year, derived from
 10 intrastate operations. Such assessment shall be paid within 30 days after the bill
 11 has been mailed to the several railroads and water carriers, which bill shall
 12 constitute notice of assessment and demand of payment thereof. The total amount
 13 which may be assessed to the railroads and water carriers under authority of this
 14 subsection shall not exceed 1.85 percent of the total gross operating revenues of such
 15 railroads and water carriers, during such calendar year, derived from intrastate
 16 operations. Ninety percent of the payment shall be deposited in the ^{fe}general fund
 17 and credited to the appropriation account under s. ~~20.155 (2) (g)~~ 20.395 (2) (gg). The
 18 railroads and water carriers shall furnish such financial information as the office
 19 department requires for purposes of this section.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

20 **SECTION 78.** 195.60 (3) of the statutes is amended to read:
 21 195.60 (3) If any railroad or water carrier against which a bill has been
 22 rendered under sub. (1) or (2) within 30 days after the rendering of such bill neglects
 23 or refuses to pay the same or fails to file objections to the bill with the office division
 24 of hearings and appeals, the office department shall transmit to the secretary of

1 administration a certified copy of the bill, together with notice of neglect or refusal
2 to pay the bill, and on the same day the ~~office~~ department shall mail to the railroad
3 or water carrier against which the bill has been rendered a copy of the notice which
4 it has transmitted to the secretary of administration. Within 10 days after the
5 receipt of such notice and certified copy of such bill, the secretary of administration
6 shall levy the amount stated on such bill to be due, with interest, by distress and sale
7 of any goods and chattels, including stocks, securities, bank accounts, evidences of
8 debt, and accounts receivable belonging to such delinquent railroad or water carrier.
9 Such levy by distress and sale shall be governed by the provisions of s. 74.10, 1985
10 stats., except that it shall be made by the secretary of administration and that said
11 goods and chattels anywhere within the state may be levied upon.

12 History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

SECTION 79. 195.60 (4) of the statutes is amended to read:

13 195.60 (4) (a) Within 30 days after the date of the mailing of any bill as provided
14 by subs. (1) and (2), the railroad or water carrier against which such bill has been
15 rendered may file with the ~~office~~ division of hearings and appeals objections setting
16 out in detail the grounds upon which the objector regards the bill to be excessive,
17 erroneous, unlawful or invalid. The ~~office~~ division of hearings and appeals, after
18 notice to the objector and the department, shall hold a hearing upon such objections,
19 not less than 5 nor more than 10 days after such notice. If after such hearing the
20 ~~office~~ division of hearings and appeals finds any part of the bill to be excessive,
21 erroneous, unlawful or invalid it shall record its findings ~~upon its minutes~~ with
22 respect to the objections and transmit to the objector and the department an
23 amended bill, in accordance with such findings. The amended bill shall have in all

1 ways the same force and effect under this section as an original bill rendered under
2 subs. (1) and (2).

3 (b) If after the hearing the ~~office~~ division of hearings and appeals finds the
4 entire bill unlawful or invalid, it shall notify the objector and the department of such
5 determination, in which case the original bill shall be deemed void.

6 (c) If after the hearing the ~~office~~ division of hearings and appeals finds that the
7 bill as rendered is neither excessive, erroneous, unlawful or invalid, either in whole
8 or in part, it shall record such findings ~~upon its minutes~~, and transmit to the objector
9 and the department notice of such ~~finding~~ findings.

10 (d) If any bill against which objections have been filed is not paid within 10 days
11 after notice of a finding that such objections have been overruled and disallowed by
12 the ~~office~~ division of hearings and appeals has been mailed to the objector, the ~~office~~
13 department shall give notice of such delinquency to the secretary of administration
14 and to the objector, in the manner provided in sub. (3). The secretary of
15 administration shall then proceed to collect the amount of the bill as provided in sub.
16 (3). If an amended bill is not paid within 10 days after a copy thereof is mailed to the
17 objector by registered mail, the ~~office~~ department shall notify the secretary of
18 administration and the objector as in the case of delinquency in the payment of an
19 original bill. The secretary of administration shall then proceed to collect the amount
20 of the bill as provided in the case of an original bill.

21 **History:** 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

SECTION 80. 195.60 (5) of the statutes is amended to read:

22 195.60 (5) No suit or proceeding shall be maintained in any court for the
23 purpose of restraining or in any way delaying the collection or payment of any bill
24 rendered under subs. (1) and (2). Every railroad or water carrier against which a bill

1 is rendered shall pay the amount thereof, and after such payment may in the manner
 2 herein provided, at any time within 2 years from the date the payment was made,
 3 sue the state in an action at law to recover the amount paid with legal interest
 4 thereon from the date of payment, upon the ground that the assessment was
 5 excessive, erroneous, unlawful, or invalid in whole or in part. If it is finally
 6 determined in such action that any part of the bill for which payment was made was
 7 excessive, erroneous, unlawful, or invalid, the secretary of administration shall
 8 make a refund to the claimant as directed by the court, which shall be charged to the
 9 appropriations to the office department.

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

10 **SECTION 81.** 195.60 (6) of the statutes is amended to read:

11 195.60 (6) No action for recovery of any amount paid under this section shall
 12 be maintained in any court unless objections have been filed with the office division
 13 of hearings and appeals as provided in this section. In any action for recovery of any
 14 payments made under this section the claimant shall be entitled to raise every
 15 relevant issue of law, but the office's findings of fact of the division of hearings and
 16 appeals made pursuant to this section shall be prima facie evidence of the facts
 17 therein stated.

end Insert 60-20

History: 1977 c. 29; 1981 c. 347 s. 80 (1); 1981 c. 391; 1987 a. 378; 1993 a. 16, 123, 491; 1995 a. 27; 1997 a. 140; 1999 a. 150; 2001 a. 16; 2003 a. 33; 2005 a. 179.

18
 19 **INSERT 62-1:**

20 **SECTION 82.** 201.01 (1) of the statutes is amended to read:

21 201.01 (1) "Commission" means the ~~office of the commissioner of railroads~~
 22 department of transportation in the case of water carriers and the public service
 23 commission in the case of other public service corporations.

History: 1971 c. 164 s. 88; 1977 c. 29; 1981 c. 347 s. 80 (2); 1983 a. 189; 1985 a. 79; 1985 a. 297 ss. 13, 76; 1993 a. 16, 123, 496; 1997 a. 140 s. 11; Stats. 1997 s. 200.01; 1999 a. 9; 1999 a. 150 s. 653; Stats. 1999 s. 201.01; 2003 a. 152; 2005 a. 179, 441.

1

2

INSERT 71-13:

3

SECTION 83. Effective date.

4

(1) This act takes effect on July 1, 2011.

5

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4043/P1dn

ARG:j.....

js

- date -

ATTN: BJ Dembach

There were significant changes to the state's railroad regulation statutes in 2005. See 2005 Wisconsin Acts 95 and 179. In particular, Act 179 included the repeal of numerous provisions that were considered inconsistent with federal law. In preparing this draft, I had some difficulty reconciling the instructions with the changes in Act 179 and also reconciling some portions of the instructions with other portions of the instructions. Please review the attached draft carefully to ensure that it is consistent with your intent. As with the 2003 budget provisions on which this draft is partially based, the draft is timed to become effective at the beginning of the next fiscal biennium.

of the

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft 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.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4043/P1dn
ARG:cjs:rs

January 20, 2010

ATTN: BJ Dembach

There were significant changes to the state's railroad regulation statutes in 2005. See 2005 Wisconsin Acts 95 and 179. In particular, Act 179 included the repeal of numerous provisions that were considered inconsistent with federal law. In preparing this draft, I had some difficulty reconciling the instructions with the changes in Act 179 and also reconciling some portions of the instructions with other portions of the instructions. Please review the attached draft carefully to ensure that it is consistent with your intent. As with the 2003 budget provisions on which this draft is partially based, the draft is timed to become effective at the beginning of the next fiscal biennium.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft 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.wisconsin.gov

Gary, Aaron

From: Dernbach, BJ
Sent: Thursday, January 28, 2010 1:22 PM
To: Gary, Aaron
Subject: RE: 4043

I just wanted to make sure that there was no "fund raid" and that all the monies collected go to the department, and none is taken out for GPR.

Thanks for the catch.

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796

From: Gary, Aaron
Sent: Thursday, January 28, 2010 1:20 PM
To: Dernbach, BJ
Subject: RE: 4043

BJ,

I am assuming you intended not to change the 90 percent / 10 percent figures on p. 59, lines 3-4 and 10-11, which would correspond to the changes being made in how the money is deposited and credited but would also result in higher assessments for the railroads/water carriers. Let me know if I am mistaken.

Aaron

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

From: Dernbach, BJ
Sent: Thursday, January 28, 2010 11:55 AM
To: Gary, Aaron
Subject: RE: 4043

Sounds good.

Thanks.

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796

From: Gary, Aaron

01/28/2010

Sent: Thursday, January 28, 2010 11:52 AM
To: Dernbach, BJ
Subject: RE: 4043

BJ,

I'll make these changes. I take it you want the next draft as an introducible "/1". Aaron

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

From: Dernbach, BJ
Sent: Wednesday, January 27, 2010 4:30 PM
To: Gary, Aaron
Subject: 4043

Gary,

Could you make the following changes and send the bill over as a draft. Thanks

Page 4, line 22-24. Change that to 100 percent of the funds are deposited to 20.395
Page 8, line 10-19. Remove
Page 27, line 21. Spacing issue
Page 58, line 16. Change 90% to 100 percent
Page 59, line 24. Change to 100 percent

If it is easier, you can remove all the references to a fund raid and have all the monies deposited to 20.395

Thanks.

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796