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## State of Misconsin 2011 - 2012 LEGISLATURE



Stars PG:wlj:md 2 3, 28

# **2011 BILL**

AN ACR to repeat 32.07 (2), 32.22, 32.51 (1) (a) to (g) and 66.1201 (10) (b) to (g); to renumber and amend 32.07 (4) and 32.51 (1) (intro.); to amend 32.03 (6) (a) (intro.), 32.06 (intro.), 32.06 (5), 32.07 (3), 32.71, 66.1201 (10) (a), 66.1311 (3), 66.1313 (1), 66.1327 (1), 66.1331 (2), 66.1331 (4) (b), 66.1331 (15), 66.1333 (3) (f), 66.1333 (5) (b) 1., 66.1333 (5) (c) 1r., 66.1333 (17) and 66.1337 (5); to repeal and recreate 66.1331 (3) (a), 66.1333 (2m) (b) and 66.1333 (2m) (bm); and to create 32.015 and 32.03 (6) (c) 5. to 7. of the statutes; relating to: various changes to the eminent domain laws.

### Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the laws governing condemnation in general, and to the laws governing the condemnation of blighted property in particular, including the following:

1. Under current law, an entity vested with the power of eminent domain may acquire property by condemnation for any public purpose. This bill provides that property may be condemned only for the following public uses:

(a) The possession, occupation, and enjoyment of the property by the general sublic or a public agency.

(b) The establishment or operation of a public utility.

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— for the enjoyment of the public agency or the general public

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#### BILL

- (c) The elimination of blighted property.
- 2. Current law provides that, in general, property that is not blighted may not be condemned if the condemnor intends to convey the property to a private entity. This bill narrows the meaning of "blighted property," thus expanding the scope of the prohibition. The bill also requires a condemnor who intends to convey property to a private entity to make additional written findings before commencing the condemnation. The condemnor must find that the property has been cited for one or more violations of state or local building codes, that the violations have not been remedied despite at least two notices to do so, and that the cost of remedying the violations is equal to more than one-half the assessed value of the property, excluding the value of the land.
- 3. Currently, a municipality may use a special procedure to condemn blighted residential property. The special procedure allows such condemnations to occur more quickly. This bill eliminates the special procedure and requires all condemnations by a housing authority, redevelopment authority, or community development authority to be conducted using the regular procedure.
- 4. The bill specifies that whenever a property owner wishes to contest the right of a condemnor to condemn his or her property in court, the owner's failure to raise specific objections before receiving the condemnor's jurisdictional offer does not preclude the owner's claim. The bill also provides that in an action to contest the right of a condemnor to condemn the owner's property, if the condemnor's intent is to eliminate blight, the condemnor must prove by a preponderance of the evidence that the owner's property is blighted property.
- 5. Currently, in most condemnation proceedings, the condemnor determines the necessity of the taking. In certain instances involving public utilities, the Public Service Commission (PSC) must issue a certificate of public convenience and necessity, which constitutes the determination of the necessity of the taking. This bill provides that in all cases except those in which a certificate of public convenience and necessity suffices, a judge must determine the necessity of the taking, which must be established by a preponderance of the evidence. The bill also provides that the determination by the PSC of the necessity of taking an undeveloped water power site is conclusive only if it is not arbitrary or unreasonable.
- 6. Current law allows a first class city (currently, only the city of Milwaukee) to use an alternative procedure to condemn property. Current law requires that the laws governing the alternative procedure be liberally construed "to provide the city with the largest possible power." This bill requires that the laws governing the alternative procedure be strictly construed.
- 7. The bill narrows the definition of "blighted area" and "blighted property" for condemnations conducted by redevelopment authorities and eliminates the provision requiring that the grant of eminent domain authority to redevelopment authorities and the procedures governing such condemnations be liberally construed.

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

# The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**SECTION 1.** 32.015 of the statutes is created to read:

32.015 Public use requirements. In addition to the restrictions specified in ss. 32.02 and 32.03, property may not be acquired by condemnation other than for the following public uses:

- (1) The possession, occupation, ownership and enjoyment of the property by

  the general public of a public agency of the quarter public.
  - (2) The establishment or operation of a public utility, as specified in s. 32.02.
  - (3) The elimination of blighted property.

**SECTION 2.** 32.03 (6) (a) (intro.) of the statutes is amended to read:

32.03 (6) (a) (intro.) In this subsection, "blighted property" means any property that is not zoned or used for agricultural purposes; that, by reason of abandonment, dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air, or sanitation, high density of population and overcrowding, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare. Property that consists of only one dwelling unit is not blighted property unless, in addition,; and to which at least one of the following applies:

**Section 3.** 32.03 (6) (c) 5. to 7. of the statutes are created to read:

- 32.03 (6) (c) 5. A finding that the owner's property has been cited for one or more violations of applicable state or local building codes involving the roof and roof framing elements; support walls, beams, and headers; the foundation, footings, and subgrade conditions; light and ventilation; plumbing; fire protection; public utilities; flooring; or walls, insulation, and exterior envelope.
- 6. The code violations under subd. 5. have not been remedied despite the issuance by the local governmental unit that issued the citations of at least 2 notices to do so.
- 7. The cost of remedying the code violations under subd. 5. would exceed an amount equal to 50 percent of the most recent assessed value of the property, excluding the value of the land.
  - **SECTION 4.** 32.06 (intro.) of the statutes is amended to read:
- **32.06** Condemnation procedure in other than transportation matters. (intro.) The procedure in condemnation in all matters except acquisitions under s. 32.05 or 32.22, acquisitions under subch. II, acquisitions under subch. II of ch. 157, and acquisitions under ch. 197, shall be as follows:
  - **Section 5.** 32.06 (5) of the statutes is amended to read:
- 32.06 (5) Court action to contest right of condemnation. When an owner desires to contest the right of the condemnor to condemn the property described in the jurisdictional offer for any reason other than that the amount of compensation offered is inadequate, such the owner may within 40 days from the date of personal service of the jurisdictional offer or within 40 days from the date of postmark of the certified mail letter transmitting such offer, or within 40 days after date of publication of the jurisdictional offer as to persons for whom such publication was necessary and was made, commence an action in the circuit court of the county

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wherein in which the property is located, naming the condemnor as defendant. Such action shall be the only manner in which any issue other than the amount of just compensation or other than proceedings to perfect title under ss. 32.11 and 32.12 may be raised pertaining to the condemnation of the property described in the jurisdictional offer. Failure to raise specific objections to the condemnation before the service of the jurisdictional offer does not preclude any claims in an action under this subsection. If the condemnor's intent in condemning the owner's property is to eliminate blight, the condemnor shall prove by a preponderance of the evidence that the owner's property is blighted property. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If such action is not commenced within the time limited the owner or other person having any interest in the property shall be forever barred from raising any such objection in any other manner. The commencement of an action by an owner under this subsection shall not prevent a condemnor from filing the petition provided for in sub. (7) and proceeding thereon. Nothing in this subsection shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn. This section shall not apply to any owner who had a right to bring a proceeding pursuant to s. 66.431 (7), 1959 stats., prior to its repeal by chapter 526, laws of 1961, effective on October 8, 1961, and, in lieu of this section, s. 66.431 (7), 1959 stats., as it existed prior to such effective date of repeal shall be the owner's exclusive remedy.

**SECTION 6.** 32.07 (2) of the statutes is repealed.

**Section 7.** 32.07 (3) of the statutes is amended to read:

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statutory provisions.

1	32.07 (3) In all other cases, the judge shall determine the necessity, which shall
2	be established by a preponderance of the evidence.
3	Section 8. 32.07 (4) of the statutes is renumbered 32.07 (2m) amended to read:
4	32.07 (2m) The determination of the public service commission of the necessity
5	of taking any undeveloped water power site made pursuant to s. 32.03 (3) shall be
6	conclusive unless the determination is arbitrary or unreasonable.
7	SECTION 9. 32.22 of the statutes is repealed.
8	SECTION 10. 32.51 (1) (intro.) of the statutes is renumbered 32.51 (1) and
9	amended to read:
10	32.51 (1) Purposes. In addition to the powers granted under subch. I, any Any
11	city may condemn or otherwise acquire property under this subchapter for: the
12	purposes specified in s. 32.015.
13	SECTION 11. 32.51 (1) (a) to (g) of the statutes are repealed.
14	SECTION 12. 32.71 of the statutes is amended to read:
15	32.71 Liberal Strict construction. This subchapter, being in derogation of
16	the common law, shall be liberally strictly construed to provide the city with the
17	largest possible power and leeway of action.
18	SECTION 13. 66.1201 (10) (a) of the statutes is amended to read:
19	66.1201 (10) (a) The authority may acquire by eminent domain any real
20	property, including fixtures and improvements, which it deems necessary to carry
21	out the purposes of ss. 66.1201 to 66.1211 after the adoption by it of a resolution
22	declaring that the acquisition of the property described in the resolution is in the
23	public interest and necessary for public use. The authority may shall exercise the
24	power of eminent domain pursuant to ch. 32 or pursuant to any other applicable

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**Section 14.** 66.1201 (10) (b) to (g) of the statutes are repealed.

**Section 15.** 66.1311 (3) of the statutes is amended to read:

66.1311 (3) The provisions of ss. 66.1301 to 66.1329 with respect to the condemnation of real property by a city for a redevelopment corporation prevail over the provisions of any other law are subject to the requirements in ch. 32.

**Section 16.** 66.1313 (1) of the statutes is amended to read:

66.1313 (1) Condemnation proceedings for a redevelopment corporation shall be initiated by a petition to the city to institute proceedings to acquire for the redevelopment corporation any real property in the development area. The petition shall be granted or rejected by the local governing body, and the resolution or resolutions granting the petition shall require that the redevelopment corporation pay the city all sums expended or required to be expended by the city in the acquisition of the real property, or for any real property to be conveyed to the corporation by the city in connection with the plan, and the time of payment and manner of securing payment, and may require that the city receive, before proceeding with the acquisition of the real property, such assurances as to payment or reimbursement by the redevelopment corporation, or otherwise, as the city deems advisable. Upon the passage of a resolution by the local governing body granting the petition, the redevelopment corporation shall make 3 copies of surveys or maps of the real property described in the petition, one of which shall be filed in the office of the redevelopment corporation, one in the office of the city attorney of the city, and one in the office in which instruments affecting real property in the county are recorded. The filing of copies of surveys or maps constitutes acceptance by the redevelopment corporation of the terms and conditions contained in the resolution. The city may shall conduct condemnation proceedings either under ch. 32 or under other laws

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applicable to the city. When title to real property vests in the city, it shall convey or lease the real property, with any other real property to be conveyed or leased to the redevelopment corporation by the city in connection with the redevelopment plan, to the redevelopment corporation upon payment by the redevelopment corporation of the sums and the giving of the security required by the resolution granting the petition.

SECTION 17. 66.1327 (1) of the statutes is amended to read:

66.1327 (1) Sections 66.1301 to 66.1309 and ss. 66.1313 to 66.1329 shall be construed liberally to effectuate the purposes of urban redevelopment, and the enumeration of specific powers in those sections does not operate to restrict the meaning of any general grant of power contained in ss. 66.1301 to 66.1329 those sections or to exclude other powers comprehended in the general grant.

**Section 18.** 66.1331 (2) of the statutes is amended to read:

that there have existed and continue to exist in cities within the state, substandard, insanitary, deteriorated, slum and blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state. The existence of these areas contributes substantially and increasingly to the spread of disease and crime (necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection, and other public services and facilities), constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities, and retards the provision of housing accommodations. This

menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids provided in this section. The acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, slum or blighted conditions or preventing recurrence of these conditions in the area, the removal of structures and improvement of sites areas, the disposition of the property for redevelopment incidental to these activities this activity, and any assistance which may be given by cities or any other public bodies, are public uses and purposes for which public money may be expended and the power of eminent domain exercised. The necessity in the public interest for the provisions of this section is declared as a matter of legislative determination.

**Section 19.** 66.1331 (3) (a) of the statutes is repealed and recreated to read:

- 66.1331 (3) (a) "Blighted area" means an area, including a slum area but excluding any area that is zoned or used for agricultural purposes, in which all of the following apply to a majority of the buildings:
- 1. They have been cited for one or more violations of applicable state or local building codes involving the roof and roof framing elements; support walls, beams, and headers; the foundation, footings, and subgrade conditions; light and ventilation; plumbing; fire protection; public utilities; flooring; or walls, insulation, and exterior envelope.
- 2. The code violations under subd. 1. have not been remedied despite the issuance by the local governmental unit that issued the citations of at least 2 notices to do so.

3.	The cost	of remedying	ng the cod	e violation	ns under s	ubd. 1.	would	exceed	an
amount	equal to	50 percent	of the m	ost recent	assessed	value	of the	building	gs,
excludir	ng the val	ue of the lar	nd.						

**Section 20.** 66.1331 (4) (b) of the statutes is amended to read:

66.1331 (4) (b) Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32 or any other laws applicable to the city.

**Section 21.** 66.1331 (15) of the statutes is amended to read:

66.1331 (15) Construction. This section shall be construed liberally to effectuate its purposes and the enumeration in this section of specific powers does not restrict the meaning of any general grant of power contained in this section or to exclude other powers comprehended in the general grant. This subsection does not apply to subs. (2) and (4) (a) 3.

SECTION 22. 66.1333 (2m) (b) of the statutes is repealed and recreated to read: 66.1333 (2m) (b) "Blighted area" means an area, including a slum area but excluding any area that is zoned or used for agricultural purposes, in which a majority of the buildings are blighted properties.

Section 23. 66.1333 (2m) (bm) of the statutes is repealed and recreated to read: 66.1333 (2m) (bm) "Blighted property" means any property within a city, other than land zoned or used for agricultural purposes, that by reason of abandonment, dilapidation, deterioration, unsafe conditions, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare, and to which all of the following apply:

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- 1. The property has been cited for one or more violations of applicable state or local building codes involving the roof and roof framing elements; support walls, beams, and headers; the foundation, footings, and subgrade conditions; light and ventilation; plumbing; fire protection; public utilities; flooring; or walls, insulation, and exterior envelope.
- 2. The code violations under subd. 1. have not been remedied despite the issuance by the local governmental unit that issued the citations of at least 2 notices to do so.
- 3. The cost of remedying the code violations under subd. 1. would exceed an amount equal to 50 percent of the most recent appraised value of the property, excluding the value of the land.

**Section 24.** 66.1333 (3) (f) of the statutes is amended to read:

66.1333 (3) (f) An authority is an independent, separate and distinct public body and a body corporate and politic, exercising public powers determined to be necessary by the state to protect and promote the health, safety and morals of its residents, and may take title to real and personal property in its own name. The authority may shall proceed with the acquisition of property by eminent domain under ch. 32, or any other law relating specifically to eminent domain procedures of redevelopment authorities.

SECTION 25. 66.1333 (5) (b) 1. of the statutes is amended to read:

66.1333 (5) (b) 1. Condemnation proceedings for the acquisition of real property necessary or incidental to a redevelopment project shall be conducted in accordance with ch. 32, or any other law relating specifically to eminent domain procedures of redevelopment authorities.

**Section 26.** 66.1333 (5) (c) 1r. of the statutes is amended to read:

66.1333 (5) (c) 1r. Condemnation proceedings for the acquisition of blighted property shall be conducted under ch. 32 or under any other law relating specifically to eminent domain procedures of authorities. The authority may hold, clear, construct, manage, improve or dispose of the blighted property, for the purpose of eliminating its status as blighted property. Notwithstanding sub. (9), the authority may dispose of the blighted property in any manner. The authority may assist private acquisition, improvement and development of blighted property for the purpose of eliminating its status as blighted property, and for that purpose the authority has all of the duties, rights, powers and privileges given to the authority under this section, as if it had acquired the blighted property.

**Section 27.** 66.1333 (17) of the statutes is amended to read:

66.1333 (17) Construction. This section shall be construed liberally to effectuate its purposes and the enumeration in this section of specific powers does not restrict the meaning of any general grant of power contained in this section or exclude other powers comprehended in the general grant. This subsection does not apply to subs. (3) (f), (5) (a) 3., (b) 1., and (c) 1r., and (6) (b) 3.

**Section 28.** 66.1337 (5) of the statutes is amended to read:

66.1337 (5) General powers conferred upon municipalities. The governing body of a municipality has all powers necessary and incidental to effect a program of urban renewal, including functions with respect to rehabilitation and conservation for the restoration and removal of blighted, deteriorated or deteriorating areas, and the local governing body may adopt resolutions or ordinances for the purpose of carrying out that program and the objectives and purposes of this section. In connection with the planning, undertaking and financing of the urban renewal program or projects, the governing body of any municipality

1	and all public officers, agencies and bodies have all the rights, powers, privileges and
2	immunities which they have with respect to a redevelopment project under s.
3	66.1331. The acquisition of property by condemnation is subject to the requirements
4	<u>in ch. 32.</u>
5	Section 29. Initial applicability.
6	(1) This act first applies to condemnation proceedings commenced on the
7	effective date of this subsection.
8	(END)

### Barman, Mike

From:

Grant, Peter

Sent:

Tuesday, March 01, 2011 11:09 AM Barman, Mike

To:

Subject:

FΕ

Mike, could you send LRB-0275/2 for a fiscal estimate? I just got a call from Trish in Lazich's office requesting that the bill get the FE before introduction.

Thanks.

Peter

### **Duerst, Christina**

From: Sen.Lazich

Sent: Friday, March 04, 2011 2:16 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-0275/2 Topic: Narrow permitted uses of eminent domain

Please Jacket LRB 11-0275/2 for the SENATE.

# Memo

To: Senator

Lazich

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2011 session draft.

LRB Number: LRB-0275

Version: "/2"

Fiscal Estimate Prepared By: (agency abbr.) **DOT** 

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 03/16/2011

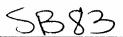
To: LRB - Legal Section PA's

Subject:

Fiscal Estimate Received For An Unintroduced Draft

- > If redrafted ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.
- > If introduced ... and the version of the attached fiscal estimate is for a previous version ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Christina) get the ball rolling on getting a fiscal estimate prepared for the introduced version.
- > If introduced ... and the version of the attached fiscal estimate is for the current version ... please write the draft's introduction number below and give to Mike (or Christina) to process.

THIS DRAFT WAS INTRODUCED AS: 2011  $_{-}$  SB  $^{3}$ 



#### Barman, Mike

From:

Barman, Mike

Sent:

Wednesday, March 16, 2011 9:53 AM

To: Cc: Sen.Lazich Sieg, Tricia

Subject:

LRB-0275/2 (un-introduced) (FE by DOT - attached - for your review)

Attachments:

11-0275\_DOT.PDF



Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau Legal Section - Front Office 1 East Main Street, Suite 200, Madison, WI 53703 (608) 266-3561 / mike.barman@legis.wisconsin.gov

# Memo

To: Senator

Lazich

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2011 session draft.

LRB Number: LRB-0275

Version: "/2"

Fiscal Estimate Prepared By: (agency abbr.) DOR

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 03/16/2011



To: LRB - Legal Section PA's

**Subject:** Fiscal Estimate Received For An Unintroduced Draft

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THIS DRAFT WAS INTRODUCED AS: 2011 \_\_\_\_\_\_\_

#### Barman, Mike

From:

Barman, Mike

Sent:

Wednesday, March 16, 2011 9:51 AM

To: Cc: Sen.Lazich Sieg, Tricia

Subject:

LRB-0275/2 (un-introduced) (FE by DOR - attached - for your review)

**Attachments:** 

FE-0275\_DOR.PDF



Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau Legal Section - Front Office 1 East Main Street, Suite 200, Madison, WI 53703 (608) 266-3561 / mike.barman@legis.wisconsin.gov

# Memo

To: Senator

Lazich

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2011 session draft.

LRB Number: LRB-0275

Version: "/2"

Fiscal Estimate Prepared By: (agency abbr.) PSC

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 03/16/2011

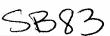


To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For An Unintroduced Draft

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- > If introduced ... and the version of the attached fiscal estimate is for the current version ... please write the draft's introduction number below and give to Mike (or Christina) to process.

THIS DRAFT WAS INTRODUCED AS: 2011 5883



#### Barman, Mike

From:

Barman, Mike

Sent:

Wednesday, March 16, 2011 3:16 PM

To: Cc: Sen.Lazich Sieg, Tricia

Subject:

LRB-0275/2 (un-introduced) (FE by PSC - attached - for your review)

Attachments:

FE-0275\_PSC.PDF



Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau Legal Section - Front Office 1 East Main Street, Suite 200, Madison, WI 53703 (608) 266-3561 / mike.barman@legis.wisconsin.gov