

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3955/P2dn
MPG/MGG/RPN:wlj:rs

January 30, 2014

Senator Petryk:

I did not make the change requested for page 9, line 15, and page 10, line 8: request to restore “shall not” instead of “may not.” Section 2.01 (8) of our drafting manual provides, “Use ‘no person may’ or ‘a person may not’ to forbid behavior. ‘No person shall’ could be interpreted to mean ‘no person is required to.’ *See Milwaukee Alliance v. Elections Board*, 106 Wis. 2d 593, 609 (1982).” In that court case, the state supreme court was addressing language changes that had been made to the state constitution. The court found that changing “no person shall” to “no person may” did not change the meaning or substance but reflected the current view of the proper use of language in legal drafting. Using the affirmative “shall” with a negative subject (no person) or with the word “not” literally negates the obligation to act but not the permission to act. “No person may” or “a person may not,” on the other hand, negates the permission and, according to the court, is the stronger prohibition. Please let me know if you have any questions.

Thank you.

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