



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 588

**Assembly Substitute
Amendment 1**

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Assembly Substitute Amendment 1 (hereafter, “the substitute”) to 2005 Assembly Bill 588 does the following:

1. The **bill** repeals certain provisions of current law providing the Department of Natural Resources (DNR) authority over locomotive spark arresters. The **substitute** removes the repeal of these provisions (i.e., retains current law and DNR’s authority).
2. The **bill** creates new statutory language specifying the Office of Commissioner of Railroads (OCR) regulatory jurisdiction related to railroad safety and authorizing OCR to participate in federal safety investigations. The **substitute** removes this provision (and related provisions), thereby restoring current law on this issue (as affected by other provisions of the bill).
3. The **substitute** repeals s. 189.02 (5) and (6), Stats., which: (a) allow the Department of Transportation (DOT) to request OCR to hold hearings and advise on railroad-related plans, policies, and programs; and (b) allow DOT to provide, by rule, for OCR review of DOT determinations.
4. The **substitute** generally removes ch. 191 (titled “Railroads; Construction”) from the scope of the bill, except for minor technical changes.
5. The **bill** repeals s. 192.15, Stats., related to engine equipment. (Locomotive equipment is covered under the Locomotive Boiler Inspection Act (LBIA)). The **substitute** removes the repeal, restoring current law.
6. The **bill** repeals s. 192.29 (2), Stats., which authorizes OCR to order stop sign installation at crossings. The **substitute** removes the repeal of this provision, restoring current law (with one technical change).
7. The **bill** amends a provision in current law requiring railroads to ring the engine bell before crossings within a city or municipality. The **bill** instead requires them to sound their horn in

compliance with federal law. The **bill** also repeals state law requirements relating to sounding train horns, whistles, and bells before crossings outside municipalities. (These requirements with respect to train horns appear to be preempted by federal law.)

The **substitute** removes the repeal of these provisions and restores current law only to the extent the provisions require trains to ring bells within a specified distance of a crossing, whether it is within or outside a municipality.

8. The **substitute** removes a provision from the **bill** that basically repeats a provision in 2005 Wisconsin Act 95.
9. The **bill** repeals s. 192.292, Stats., relating to the length of time a train can obstruct a highway (which, for preemption purposes, can also be seen as a restriction on how long trains can be). The **substitute** removes the repeal, thus restoring current law (but making changes to the penalty).
10. The **substitute** repeals s. 192.32 (1) (c), Stats. Section 192.32, Stats., generally prohibits most persons (but not railroad employees) from walking on or being on railroad tracks. Some exceptions exist, including crossings on public highways. The **substitute** repeals the exception allowing any person to walk directly across the tracks or railroad right-of-way. [**Note:** Walking directly across on a highway is still permissible.]
11. The **bill** repeals s. 192.324, Stats., which provides OCR authority to receive complaints, hold hearings, and order changes with respect to walks, railings, or other safety issues on railroad bridges. The **substitute** removes the repeal, thus restoring current law.
12. The **bill** repeals s. 192.52, Stats., which requires OCR approval for railroads to move or close railroad repair and maintenance shops and terminals. The **substitute** removes the repeal, thus restoring current law. The **substitute** also expands the provision so that it is not limited to “steam” railroads.
13. The **substitute** repeals ss. 192.71 and 192.72, Stats., which describe railroad authority with respect to certain railroad lands.
14. The **substitute** specifies that the provisions relating to “water carriers” apply to common carriers and to contract carriers that are not private contract carriers.
15. The **bill** repeals OCR authority to order the repair or reconstruction of any inadequate or unsafe railroad track or railroad structure. The **substitute** removes this repeal with respect to tracks, thereby restoring current law on this issue, but retains the **bill’s** repeal of OCR authority to make such orders with respect to railroad structures.
16. The **substitute** makes technical changes to recognize OCR authority with respect to certain complaints for which, under the **bill** and the **substitute**, OCR continues to have authority over railroads. In addition, the **substitute** eliminates OCR’s authority to direct DOT to investigate complaints, reserving such investigation to OCR.

17. The **substitute** removes OCR authority newly created in the **bill**, “regarding any railroad practice or activity over which [OCR] has regulatory jurisdiction,” to direct DOT to investigate and for OCR to conduct a hearing. This change corresponds to the change described in item 16., above.
18. The **bill** repeals s. 195.31, Stats., which provides OCR authority to receive complaints (or act on its own), hold hearings, and order the repair, alteration, or reconstruction of certain railroad bridges found to be unsafe. The **substitute** removes the repeal, thus restoring current law.
19. The **substitute** removes the word “monthly” before “accident” (on page 37, line 11 of the bill), thus covering any such report provided to the federal government and not just monthly reports.
20. The **substitute** inserts a nonstatutory provision to clarify that the **bill** does not negate or void any prior OCR order.
21. The **substitute** makes technical changes in various places to alter the phrasing of certain language related to federal preemption and changes various penalties.

[**Note:** The fact that provisions are “restored” to current law in the **substitute** does not mean that they are not preempted. It only means that they remain in the Wisconsin statutes. A court may still find that the provision is unenforceable based upon federal law preemption.]

Legislative History

Assembly Substitute Amendment 1 was introduced by Representative Townsend. On March 1, 2006, the Assembly Committee on Highway Safety, in executive session, voted to adopt Assembly Substitute Amendment 1 on a vote of Ayes, 8; Noes, 0. The committee then voted to recommend passage of the bill, as amended, on a vote of Ayes, 8; Noes, 0.

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