

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/12/99**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **David Hutchison (608) 266-5350**

By/Representing: **Julie Conley**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Alt. Drafters: **rmarchan**

Subject: **Fin. Inst. - miscellaneous  
State Government - miscellaneous**

Extra Copies: **RAC - 1**

**Pre Topic:**

No specific pre topic given

**Topic:**

Use of electronic signatures

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			jfrantze 03/2/99	_____	lrb_docadmin 03/2/99		State
/2	kuesejt 03/4/99	chanaman 03/4/99	jfrantze 03/4/99	_____	lrb_docadmin 03/4/99		State

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/3	kuesejt 03/10/99	chanaman 03/11/99	jfrantze 03/11/99	_____	lrb_docadmin 03/11/99	lrb_docadmin 03/16/99	

FE Sent For:

04-08-99

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1/3 kuesejt 3/10 CMH 3/11 1/3 3/11 3/11

Vers.      Drafted      Reviewed      Typist      Proofed      Submitted      Jacketed      Required

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ELECTRONIC SIGNATURES

1997 WIS. ACT 306

1997 A.B. 811

Date of enactment: June 30, 1998

Date of publication: July 14, 1998

Effective date: See Section 9

An Act to repeal 16.855 (23); to renumber chapter 137; to amend 20.575 (1) (g), 137.01 (4) (a) and 990.01 (38); to create chapter 137 (title), subchapter II of chapter 137 [precedes 137.04] and 224.30 of the statutes; and to affect 1997 Wisconsin Act 204, section 96(1)(c), 1997 Wisconsin Act 204, section 96 (1) (d) (intro.), 1., 2. and 3. and 1997 Wisconsin Act 204, section 96 (1) (e) (intro.) and 1.; relating to: authorizing the use of electronic signatures and creating a committee to study the use and regulation of electronic signatures in this state, requests for proposals for electric generating capacity and requiring the exercise of rule-making authority.

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

- Section 1. 16.855 (23) of the statutes, as created by 1997 Wisconsin Act 27, is repealed.
Section 2. 20.575 (1) (g) of the statutes, as affected by 1997 Wisconsin Act 35, is amended to read:
20.575(1)(g) Program fees. The amounts in the schedule for the purpose of carrying out general program operations. Except as provided under par. (ka), all amounts received by the secretary of state, including fees under chs. 132 and subch. I of ch. 137 and all moneys transferred from the appropriation under s. 20.144 (1) (g), shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), any unencumbered balance at the close of a fiscal year exceeding 10% of that fiscal year's expenditures under this appropriation shall lapse to the general fund.
Section 3. Chapter 137 (title) of the statutes is created to read:

CHAPTER 137

AUTHENTICATIONS

- Section 4. Chapter 137 of the statutes, as affected by 1997 Wisconsin Act 27, is renumbered subchapter I of chapter 137 [precedes 137.01].
Section 5. 137.01 (4) (a) of the statutes is amended to read:
137.01(4)(a) Every official act of a notary public shall be attested by the notary public's written signature or electronic signature, as defined in s. 137.04 (2).
Section 6. Subchapter II of chapter 137 [precedes 137.04] of the statutes is created to read:

CHAPTER 137

SUBCHAPTER II

ELECTRONIC SIGNATURES

137.04. Definitions

In this subchapter:

- (1) "Authenticate" means to validate a document in such a manner that the identity of the person who originates the document is incontrovertible and the information contained in the document is identical to that originated by the person.

Additions are indicated by underline; deletions by strikeout

(2) "Electronic signature" means any combination of words, letters, symbols or characters that is attached to or logically associated with an electronic record and used by a person for the purpose of authenticating a document that has been created in or transformed into an electronic format.

(3) "Governmental unit" means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts, and any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivisions.

#### 137.05. Submission of written documents

Unless otherwise prohibited by law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted by transforming the document into electronic format, but only with the consent of the governmental unit that is to receive the document.

#### 137.06. Electronic signature

(1) Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be signed or given effect with an electronic signature if the electronic signature meets all of the following requirements:

- The electronic signature is unique to the person using it.
  - The electronic signature is capable of verification.
  - The electronic signature is under the sole control of the person using it.
  - The electronic signature is linked to the document to which it is attached or associated in such a manner that, if the document is altered after the electronic signature is created, the electronic signature is invalidated.
  - For documents submitted to the department of financial institutions, the electronic signature conforms to any rules promulgated by the department of financial institutions.
- (2) An electronic signature that satisfies all of the requirements specified in sub. (1) has the same force and effect as a manual, facsimile or other form of signature.

Section 6m. 224.30 of the statutes is created to read:

#### 224.30. Powers and duties of the department

- In this section, "department" means the department of financial institutions.
- The department shall promulgate rules regarding the submission of written documents under s. 137.05 and the use and verification of electronic signatures under s. 137.06.

Section 7. 990.01 (38) of the statutes is amended to read:

990.01(38) **Signature.** If the signature of any person is required by law it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the person's request and in the person's presence, or, subject to any applicable requirements under subch. II of ch. 137, the electronic signature of the person.

Section 7d. 1997 Wisconsin Act 204, section 96 (1) (c) is amended to read:

[1997 Wisconsin Act 204] Section 96 (1) (c) Notwithstanding section 196.491 (3) (a) 1. of the statutes, as affected by this act, no later than August 31, 1998, each ~~eastern Wisconsin utility~~ contractor specified in paragraph (b) (intro.) shall apply to the commission for any certificate that is required for construction of new electric generation capacity under the contracts into which it enters under paragraph (b) 3. and, if required under section 196.491 (3) (a) 3. a. of the statutes, as affected by this act, submit an engineering plan to the department as specified in section 196.491 (3) (a) 3. a. of the statutes, as affected by this act.

2962

Additions are indicated by underline; deletions by ~~strikeout~~

Section 7e. 1997 Wisconsin Act 204, section 96 (1) (c) is amended to read:

[1997 Wisconsin Act 204] Section 96 (1) (c) Notwithstanding section 196.491 (3) (a) 1. of the statutes, as affected by this act, no later than August 31, 1998, each ~~eastern Wisconsin utility~~ contractor specified in paragraph (b) (intro.) shall apply to the commission for any certificate that is required for construction of new electric generation capacity under the contracts into which it enters under paragraph (b) 3. and, if required under section 196.491 (3) (a) 3. a. of the statutes, as affected by this act, submit an engineering plan to the department as specified in section 196.491 (3) (a) 3. a. of the statutes, as affected by this act.

1. Within 15 days after the plan, the department shall provide each department permit or approval engineering plan, appears to be

2. Within 10 days after the ~~eastern Wisconsin utility~~ contract listing.

3. The department shall determine and, no later than 15 days after determination. If the department shall state the reason for the determination and refile an application. There is no limit on the number of subdivisions. If the department 15 days after the application is

Section 7f. 1997 Wisconsin Act 204, section 96 (1) (c) is amended to read: [1997 Wisconsin Act 204] Section 96 (1) (c) Notwithstanding section 196.491 (3) (a) 1. and 2. of the statutes, as affected by this act, no later than August 31, 1998, each ~~eastern Wisconsin utility~~ contractor specified in paragraph (b) (intro.) shall apply to the commission for any certificate that is required for construction of new electric generation capacity under section 196.491 (3) of the statutes, as affected by this act, submit an engineering plan to the department as specified in section 196.491 (3) (a) 3. a. of the statutes, as affected by this act.

1. The commission shall determine 15 days after the application is the commission determines that the application that the commission number of times that an ~~eastern Wisconsin utility~~ this subdivision. If the commission within 15 days after the application

Section 8. Nonstatutory provisions (1) Commission on the use of electronic signatures

(a) In this subsection:  
1. "Committee" has the meaning given in s. 196.491 (3) (a) 3. a. of the statutes.  
2. "Electronic signature" has the meaning given in s. 137.06 (1) (a) of the statutes.

3. "Governmental unit" has the meaning given in s. 137.06 (3) of the statutes.

(b) There is established a commission on the use of electronic signatures consisting of members appointed by the department.

(c) The commission shall study and report to the department on any other matter affecting the use of electronic signatures.

(d) The department of administration shall develop and promote expected uses of electronic signatures and shall report to the department on the results of performing their duties.

(e) No later than January 1, 1999, the department of administration, and to the legislature, shall report to the legislature the statutes regarding the use of electronic signatures.

Additions are

ymbols or characters used by a person for transformed into an

mission, department, vernment created or legislature, the office of body within one or ne or more political

law to be submitted ay be submitted by sment of the govern-

manual, facsimile or e or other form of electronic signature

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ons, the electronic ancial institutions. ed in sub. (1) has

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it shall always be son's mark or the d in the person's of ch. 137, the

l: 01 (3) (a) 1. of the Wisconsin utility or any certificate he contracts into (3) (a) 3. a. of the nt as specified in

Section 7e. 1997 Wisconsin Act 204, section 96 (1) (d) (intro.), 1., 2. and 3. are amended to read:

(1997 Wisconsin Act 204) Section 96 (1) (d) (intro.) Notwithstanding section 196.491 (3) (a) 3. and b. of the statutes, as affected by this act, if an ~~eastern Wisconsin utility~~ a contractor specified in paragraph (b) (intro.) submits an engineering plan to the department under paragraph (c), the ~~eastern Wisconsin utility contractor~~ and the department shall satisfy each of the following:

- 1. Within 15 days after the ~~eastern Wisconsin utility contractor~~ provides the engineering plan, the department shall provide the ~~eastern Wisconsin utility contractor~~ with a listing of each department permit or approval which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility.
- 2. Within 10 days after the department provides a listing specified in subdivision 1., the ~~eastern Wisconsin utility contractor~~ shall apply for the permits and approvals identified in the listing.
- 3. The department shall determine whether an application under subdivision 2. is complete and, no later than 15 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. ~~An eastern Wisconsin utility~~ A contractor may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subdivision. If the department fails to determine whether an application is complete within 15 days after the application is filed, the application shall be considered to be complete.

Section 7f. 1997 Wisconsin Act 204, section 96 (1) (e) (intro.) and 1. are amended to read:

(1997 Wisconsin Act 204) Section 96 (1) (e) (intro.) Notwithstanding section 196.491 (3) (a) (b) and (g) 1. and 2. of the statutes, as affected by this act, the commission and an ~~eastern Wisconsin utility~~ a contractor specified in paragraph (b) (intro.) that applies for a certificate under section 196.491 (3) of the statutes, as affected by this act, shall satisfy each of the following:

- 1. The commission shall determine whether the application is complete and, no later than 15 days after the application is filed, notify the applicant about the determination. If the commission determines that the application is incomplete, the notice shall state the reason for the determination. ~~An eastern Wisconsin utility~~ A contractor may supplement and refile an application that the commission has determined to be incomplete. There is no limit on the number of times that an ~~eastern Wisconsin utility~~ a contractor may refile an application under this subdivision. If the commission fails to determine whether an application is complete within 15 days after the application is filed, the application shall be considered to be complete.

Section 8. Nonstatutory provisions.

- (1) Commission on the use of electronic signatures.
  - (a) In this subsection:
    - 1. "Committee" has the meaning specified in section 15.01 (3) of the statutes.
    - 2. "Electronic signature" has the meaning specified in section 137.04 (2) of the statutes, as created by this act.
    - 3. "Governmental unit" has the meaning specified in section 137.04 (3) of the statutes, as created by this act.
  - (b) There is established a committee called the commission on the use of electronic signatures consisting of members appointed by the governor.
  - (c) The commission shall study the use and regulation of electronic signatures in this state and any other matter affecting the use and regulation of electronic signatures.
  - (d) The department of administration shall provide to the commission information on the expected uses of electronic signatures by governmental units in exercising their powers and performing their duties.
  - (e) No later than January 1, 1999, the commission shall submit a report to the department of administration, and to the legislature in the manner provided under section 13.172 (2) of the statutes regarding the use of electronic signatures and the submission of written

documents in electronic format to governmental units. The report shall include the commission's proposed recommendations regarding the use of electronic signatures and the submission of written documents in electronic format to governmental units and shall include any proposed legislation that the commission considers necessary to implement the recommendations.

(f) No later than the first day of the 12th month beginning after the publication of this act, the commission shall submit a report to the legislature in the manner provided under section 13.172 (2) of the statutes regarding the use and regulation of electronic signatures and the submission of electronic documents in this state. The report shall include the commission's proposed recommendations regarding the use and regulation of electronic signatures in this state and shall include any proposed legislation that the commission considers necessary to implement the recommendations.

(2) Report to the commission on the use of electronic signatures and to the joint committee on information policy.

(a) In this subsection:

1. "Authenticate" has the meaning specified in section 137.04 (1) of the statutes, as created by this act.

2. "Electronic signature" has the meaning specified in section 137.04 (2) of the statutes, as created by this act.

3. "Governmental unit" has the meaning specified in section 137.04 (3) of the statutes, as created by this act.

(b) No later than November 1, 1998, the department of financial institutions shall report to the commission under subsection (1) on the use of electronic signatures and to the joint committee on information policy any information and recommendations that the department considers useful to governmental units in implementing systems to use electronic signatures to authenticate electronic documents submitted to governmental units, including all of the following:

1. Any technical or legal barriers to the use of electronic signatures.

2. The role of electronic signatures in designing and implementing a comprehensive system for securing the submittal of electronic documents to a governmental unit.

3. An evaluation of the advantages and disadvantages of particular technologies for creating and using electronic signatures to authenticate electronic documents submitted to governmental units.

(3) Submission of proposed rules regulating electronic signatures to the legislative council staff.

(a) In promulgating rules under section 224.30 (2) of the statutes, as created by this act, the department of financial institutions shall consider the report submitted by the commission on the use of electronic signatures under subsection (1) (e).

(b) The department of financial institutions shall submit in proposed form the rules required under section 224.30 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the submission of the proposed legislation by the commission on the use of electronic signatures under subsection (1) (e).

**Section 9. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 16.855 (23), 20.575 (1) (g), 137.01 (4) (a) and 990.01 (38) and subchapter II of chapter 137 of the statutes, the renumbering of chapter 137 of the statutes and the creation of chapter 137 (title) of the statutes take effect on the first day of the 12th month beginning after publication.

An Act to repeal 36.09 (1) (k) (3); to amend 36.09 (1) (k) 230.25 (1), 230.26 (2), 230.27 (1) (g) 2, and 230.40 (3); and to amend 230.14 (1) (k) (dm) of the statutes; and to amend the

The people of the state follows:

**Section 1.** 36.09 (1) (k) 230.09(1)(k)2.b. Establish maximum rate of pay and employment relations, assignment ranges. This subd. 2. b. do

**Section 2.** 36.09 (1) (k) 230.09 (1) (k) 230.14 (1) of

**Section 3.** 36.09 (1) (k) 230.14 (1) of

**Section 4.** 230.14 (1) of

230.14(1) Recruitment conducted in a manner that assures sound personnel management. Due consideration shall be given to

**Section 5.** 230.14 (2) of

**Section 5e.** 230.15 (1) of

230.15(1) Appointments according to merit and fitness examination. The administrator under sub. subs. (1m) and made under sub. (2m).

**Section 5r.** 230.15 (2m)

230.15(2m) If a vacancy is notified by an appointing authority under s. 230.275, the administrator shall

**Section 6.** 230.16 (2) of

230.16(2) Competitive examination of application are residents stated in the examination a have a fair opportunity to be the judgment of the administrator of the service. If a critical administrator may open a position.

**Section 7.** 230.16 (3) of

# REPORT TO THE WISCONSIN LEGISLATURE AND DEPARTMENT OF ADMINISTRATION

Submitted December 30, 1998 by the

## COMMISSION ON THE USE OF ELECTRONIC SIGNATURES [www.esignatures.org](http://www.esignatures.org)

The Commission on the Use of Electronic Signatures (the Commission) has reviewed the report submitted October 19, 1998 by the Wisconsin Department of Financial Institutions (<http://www.wdfi.org/newsroom/esignreport.pdf>).

The current report is intended to advise the Wisconsin Department of Administration regarding the use of electronic signatures and the submission of written documents in electronic format to governmental units. We have also included proposed legislation the Commission considers necessary to implement the recommendations.

### **Recommendations to the Department of Administration**

- *Agency/Public Needs.* Governmental units, including state agencies, must be able to deploy technologies that will support the needs of the governmental unit and the filing public.
- *Practicality/Enforceability.* The state must be able to implement electronic signature technology in a way that is operationally practical and enforceable by law.
- *Compatibility.* The technology must be integrated with existing and planned IT infrastructure to reduce costs of deployment, administration, and support.
- *Intra-agency Considerations.* State agencies must be able to exchange signed and encrypted electronic documents with local, county, and federal government, private business, and citizens.
- *Usability.* Make it easy for customers to use electronic signatures and to apply appropriate levels of security without having to know and understand the complexity of the technology.

The Wisconsin Department of Administration is responsible for the state's technology infrastructure and must be able to standardize technologies that address different levels of security needs. Governmental units, on the other hand, must have the flexibility to decide which level of security will best address their specific applications. The Commission therefore recommends that the Department of Administration replace the Department of Financial Institutions as the rule-making authority. We do so while strongly recommending that the

process of developing rules on standard technologies involve a representative group of other state agencies and local governmental units. We also recommend that, while the Department of Administration may, through cost-benefit analysis, find it appropriate to become a Certificate Authority, it should never become the sole Certificate Authority in the state.

### **Legislation Necessary to Implement The Commission's Recommendations**

Per Section 8(e) of 1997 Wisconsin Act 306 (the "Act"), the Commission on the Use of Electronic Signatures (the "Commission") is required to include in an initial report to the Department of Administration and the legislature "any proposed legislation that the commission considers necessary to implement the recommendations." Initial report recommendations are directed toward the use of electronic signatures and the submission of written documents in electronic format to governmental units.

In considering the existing statutory language and the need for proposed legislation, the Commission kept in mind three goals that represent the underpinnings of its recommendations to the Department of Administration:

- *Trustworthiness.* In an environment where the evolution of digital and other electronic formats is dynamic, technologies that are used in conjunction with state transactions must have the trust of both the public and the governmental units that are being asked to use them. At a minimum, filing technologies that are currently in use should not be precluded. Other principles related to trust should control the choice of technologies to be used in conjunction with public transactions in the future. Because of the differing substantive needs for security, legislation should not restrict the ability of governmental units to choose technologies that provide levels of security appropriate to the filing under consideration. By the same token, governmental units that have similar security concerns should not be allowed to choose different technologies to address those concerns where a standard technology will suffice. Standardization based on functional equivalency serves the economic interests of both the government and the public.
- *Usability.* This goal focuses on user friendliness, availability and robustness of technologies that are prescribed for state transactions. Examples of current technologies that fit these usability criteria extremely well are telephonic transmissions and facsimile transmissions. Examples of technologies that are gaining a wider acceptance with time are Internet technologies. When adopting future technologies to meet functional security concerns, the Commission believes that usability of prescribed technology will be a key decision criterion.

- *Technology Neutral.* This goal focuses on not precluding the use of future technologies that can fulfill the demonstrated functional needs for security and usability. The Commission recognizes that the evolution of electronic format technologies is dynamic and thinks that legislation should not restrict the adoption of appropriate technologies that meet these functional needs.

## **1997 WISCONSIN ACT 306**

In meetings held to date, the Commission has discussed the many private transactions that are already accomplished within this state through electronic data interchange and other forms of electronic commerce. Additionally, the Commission has become aware that some regulations currently allow electronic alternatives to written signature transactions.<sup>1</sup> If the Act continues in its present form on the date it is scheduled to take effect,<sup>2</sup> those electronic transactions<sup>3</sup> as well as private transactions<sup>4</sup> have the potential to be invalidated by operation of the Act because of an overly restrictive view on authentication. The Commission does not believe that the legislature intended the Act to have that type of effect and does not believe that any state or public policy would be advanced by that result.

To facilitate the adoption of future technologies that meet the trustworthiness, usability and the technology neutral goals that have previously been enumerated, the Commission believes the provisions of the Act need to be modified.

A section by section review of the current Act follows along with suggested legislative changes to the Act.

### ***Section by Section review; Suggested Changes***

Section 6 of the current Act creates a new subchapter II to Chapter 137. It contains the essence of the legislature's treatment on electronic signatures.

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<sup>1</sup> See footnote 3 below.

<sup>2</sup> Section 9(1) of the Act provides that the substantive provisions become effective on the first day of the 12th month beginning after publication. The Act was published on July 14, 1998 and the effective date is therefore July 1, 1999.

<sup>3</sup> During its meetings, the Commission was advised that telephonic filing of unemployment compensation claims using Social Security Numbers and PINs has been recognized as an appropriate alternative to a conventional signed certification by the Department of Workforce Development. Wis. Stats. 108.08(1) requires that notice of a claim for benefits be given in a manner prescribed by the Department of Workforce Development, and DWD 129.01(2) provides the alternatives of written and telephonic certification for future claims.

<sup>4</sup> A number of transactions with companies in and outside the state of Wisconsin involve electronic data interchange. A significant portion of those transactions involve goods in excess of \$500. The Statute of Frauds section of the Wisconsin Uniform Commercial Code requires a writing for those goods signed by the person against whom enforcement is sought in order to enforce those types of transactions. These writings are typically contracts entered into between the trading partners before EDI trading begins. See Wis. Stats. 402.201.



Section 137.04 is the definitional treatment on electronic signatures. Under section 137.04(2), an "electronic signature" includes "any combination of words, letters, symbols or characters that is attached to or logically associated with an electronic record and used by a person for the purpose of authenticating a document that has been created in or transformed into an electronic format." Consequently, no "electronic signature" exists unless it is "attached to" or "associated with" an underlying electronic document. While no separate definitional treatment of "electronic document" is provided, the Commission believes that the language modifying electronic document viz. one "that has been created in or transformed into an electronic format" provides sufficient definition. Additionally, the Commission notes that the electronic document definition is broad enough to cover the range of electronic technologies that currently exist, e.g., facsimile, telephonic transmission by voice and digital technologies. As important, it is flexible enough to cover the range of technologies that might exist in the future.

The Commission suggests that broader language at the beginning of the definition would be appropriate so as not to preclude the use of future signature technologies. Combinations of "words, letters, symbols or characters" are not an exhaustive listing of current technologies that might provide an authentication functionality which is the object of the statute. The Commission's proposed legislation broadens the specification of signature techniques to allow the adoption of technologies that are sufficient to accomplish the intended authentication.

According to the section 137.04(2) definition, the purpose of the electronic signature is to provide an "authentication" of the underlying document with which it is associated. The Commission agrees that "authentication" is the purpose of electronic signatures. It believes, however, that the definition of "authenticate" in section 137.04(1) is inappropriate because it adopts an approach to authentication that unduly restricts the use of technologies which would appropriately address the security and usability needs of the filing public.

The Commission views authentication as having one or more effects determined by the intent of the person who is filing or transmitting the associated electronic document. Depending on the circumstances, the Commission believes that the potential outcomes intended can be one or more of the following:

- *Identification.* To identify the associated document as having originated from them; or
- *Adoption or acceptance.* To adopt or accept the terms of an associated electronic document; or
- *Integrity.* To establish the integrity of the information in an associated electronic document.

Which of the above effects are intended by electronic authentication should be dependent on the context and objective indicia inherent in the circumstances of the associated electronic document that is transmitted. In that respect, the law governing the effect of electronic signatures should not differ materially from rules that are used to determine the effect of written signatures.

The Commission recognizes that the variety of contexts in which electronic signatures are used can justify the use of different technologies to accomplish the same effect. For example, a person who seeks a dog or fishing license might be justified in using facsimile or telephonic means to certify information transmitted with an associated electronic application. Because of a larger dollar exposure, however, a corporate taxpayer who intends to adopt the associated return filed electronically with the Department of Revenue would probably be more comfortable using public key-private key encryption in order to implement an adoption effect. In this respect, the Commission believes that governmental units should have the ability to implement technologies appropriate in the context of the transactions and transmissions they receive. Those technologies ought to provide the required comfort and ease of use for the filing public. Otherwise put, governmental units should be able to implement technologies that are appropriate to their functional needs for security and usability.

This flexibility would not be allowed by the definition that currently exists in section 137.04(1) of the statutes. There, authenticate means "to validate a document in such a manner that the identity of the person who originated the document is incontrovertible and the information contained in the document is identical to that originated by the person." This definition of authentication focuses on the ability of technologies and not on the needs of the filing public. In an Act that has a broad definition of electronic signatures, this definition is unduly restrictive. For example, assuming digital technologies, the current Act would require the use of public key-private key encryption to accomplish identity and message digest technology to accomplish integrity irrespective of whether the filing involved a corporate taxpayer or someone who was filing for a dog license. Indeed, the legality of a number of current digital transactions that utilize personal identification number (PIN) authentication techniques would be called into question. The Commission believes that this approach has negative implications for the adoption of electronic filing technologies and would discourage and not encourage the use of these technologies by filers. Additionally, it believes this definition could have the unwelcome effect of eliminating methods of electronic filing with the state that are currently allowed by statute. See the reference to telephonic certifications in footnote 3, supra. The Commission recommends that the definition of authenticate as it currently exists in section 137.04(1) be eliminated without replacement.

Section 137.04(3) of the statute defines "governmental units," and the Commission finds that treatment appropriate.

Section 137.05 provides that governmental units may allow documents that are required to be submitted in writing with signature to be submitted in electronic format (i.e., with electronic signature) provided the governmental unit consents to receipt of the document in that fashion. The Commission generally agrees with this approach with the following comments.

First, governmental units charged with enforcement or administration related to transactions are in the best position to understand the electronic functionality possessed by their filers, its own budget and abilities, and the degree of comfort its filers have with different types of technologies. The Commission therefore believes that the issue of whether electronic transactions will be accepted and the functional needs for security and usability associated with those transactions is rightfully determined by individual governmental units.

On the other hand, the specification of technologies that fulfill those functional needs, if left to individual governmental units, could result in an unnecessary proliferation of technologies for functionally equivalent electronic transactions. To standardize technologies across governmental units for functionally equivalent security, the Commission believes that it is necessary to place rulemaking authority related to specification of technology infrastructure in the hands of a single agency. For this reason, the Commission is proposing the placement of such rulemaking authority in the hands of the Department of Administration by adding a second subsection to current section 137.05.<sup>5</sup>

Section 137.06 currently speaks to the conditions under which electronic signatures and their associated electronic documents will be considered to have the same effect as written signatures in written documents. In this respect, it governs both public and private transactions within the state. Like the definition for "authenticate" in section 137.04(1), it mandates a single functional standard of security for all such documents irrespective of the security and usability needs associated with those documents. The Commission has already expressed concerns regarding the use of restrictive technology mandates in its review of section 137.04(1).

The regulation of private transactions requiring signature presents additional concerns. Because the use of electronic signatures in private transactions is effective only in circumstances which evidence a consent of the parties, the Commission believes that legislation requiring a universal standard of technological sufficiency is not appropriate. Side agreements and prevailing commercial practice in this area provide a sufficient common law framework for determining whether an authentication effect is intended and whether an authentication effect has been accomplished. Those practices allow appropriate evidentiary scrutiny on whether there was the requisite intent to contract, proof

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<sup>5</sup> See also the corresponding elimination of section 224.20(2) which is consistent with Department of Administration authority in this area.

that the appropriate procedures were used, and assessment of whether the procedures agreed to are commercially reasonable.<sup>6</sup>

As a result, the Commission is proposing a change in focus from the specific functional technology specification that is reflected in current section 137.06 to a new section 137.06 that enables the use of all electronic signatures that are not "otherwise prohibited by law." The shared responsibility for technology specification between the Department of Administration and the involved governmental unit in the proposed redraft of section 137.05 defines which technologies are not "otherwise prohibited by law". The common law treatment of electronic commerce provides similar clarity for what is not "otherwise prohibited by law" in the context of private transactions.

Finally, the Commission proposes to eliminate section 224.30(2) as it exists in the current Act consistent with its view that the Department of Administration and not the Department of Financial Institutions is the appropriate rulemaking agency with respect to technology infrastructure for government transactions.

### ***Other Issues***

The Commission recognizes that there may be existing statutes requiring written signatures that do not make it clear whether an electronic signature is prohibited for substantive reasons. It considers any type of legislation involving substantive considerations as beyond the scope of proposed legislation the Commission is required to provide the Department of Administration and the legislature.

An example of this is the current proxy appointment statute considered by the Commission in its November 10, 1998 meeting. See Wis. Stat. 180.0722. In specifying that the proxy appointment form must be signed in person or by an attorney-in-fact, that section is not clear as to whether an electronic signature would be one that would be "otherwise prohibited by law." A number of states have passed laws specifically enabling electronic proxies and an increasing number of corporations are using electronic proxies as a means of offering shareholders an additional avenue to vote their shares.<sup>7</sup> The consensus view of the Commission was that remedial modifications to Chapter 180 regarding proxy

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<sup>6</sup> This broad authentication approach taken by the Commission is consistent with that taken by the National Conference Of Commissioners On Uniform State Laws in proposed Article 2B on Software Contracts and Licenses of Information (December 1998 ALI Council Draft) (see <http://www.law.upenn.edu/library/ulc/ulc.htm#ucc2b>) and in the September 18, 1998 Draft of the proposed Uniform Electronic Transactions Act (see <http://www.law.upenn.edu/library/ulc/ulc.htm#ueccta>).

<sup>7</sup> According to a posting at the American Society for Corporate Secretaries' web site, the following states currently allow electronic proxies: California, Delaware, Illinois, Indiana, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New York, North Dakota, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Tennessee, Virginia and Wyoming. See <http://www.ascs.org/elecdis5.html>. A total of 134 out of 219 companies interviewed indicated they would be offering telephone voting this proxy season while only 17 of those companies offered that type of voting three years ago. Additionally, 95 out of 207 companies interviewed declared an intention to offer Internet voting this proxy season. See <http://www.ascs.org/elecdis15.html>.

voting are not within the scope of legislation to be considered by the Commission and should be handled through separate legislation.

While the need for clarifying legislation allowing electronic proxies may be clear, the same cannot be said about authentication of wills for probate purposes. The formalities in the Wisconsin Probate Code are intended to protect against fraud and coercion as well as implement the transferor's intent. The requirements for attestation by witnesses in the presence of the testator serve the substantive purpose of protecting against undue influence and thereby help guarantee that the will truly represents the testator's desires. See e.g. Wis. Stat. 853.04. Adaptability of the substantive principles to available electronic technologies is therefore not as clear.<sup>8</sup>

During the course of its meetings, the Commission considered whether legislation regarding Certificate Authorities was necessary. The Commission felt that any legislation on this topic was not required for government transactions and therefore has not proposed any legislation at this time.<sup>9</sup> The Commission did feel, however, that functional requirements for Certificate Authorities used for government transactions would be part of a specification that the Department of Administration developed in conjunction with its rulemaking authority under proposed section 137.05(2). In addition, the Commission believes the Department of Administration should have the discretion to designate itself as a Certificate Authority for government transactions but that it should not be the sole Certificate Authority.

***Proposed Legislation***

**STATUTORY PROVISIONS ON ELECTRONIC SIGNATURES**

*Proposed deleted text is marked with a line-through. Proposed created text is marked with an underline.*

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**137.01 Notaries.**

**(4) ATTESTATION.** (a) Every official act of a notary public shall be attested by the notary public's written signature or electronic signature, as defined in s. 137.04 (2).

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<sup>8</sup> *But see* the recent article in the October 1998 issue of the Wisconsin Bar Bulletin entitled Wisconsin's New Probate Code where the author describes recent changes to the Wisconsin Probate Code and suggests that the trend of increasingly passing property to survivors by nonprobate means may signal a move away from formalities in the future. See <http://www.wisbar.org/wislawmag/archive/oct98/probate.html>.

<sup>9</sup> The Commission will again consider the issue of Certificate Authorities in the context of its report to the legislature scheduled for mid-1999.

**137.04 Definitions.** In this subchapter:

~~(1) “Authenticate” means to validate a document in such a manner that the identify of the person who originates the document is incontrovertible and the information contained in the document is identical to that originated by the person.~~

~~(2) (1) “Electronic signature” means any combination of words, letters, symbols or characters, or any identifier or authentication technique, that is attached to or logically associated with a document that has been created in or transformed into an electronic format an electronic record and used by a person for the purpose with the intent of authenticating a document that has been created in or transformed into an electronic format.~~

~~(3) (2) “Governmental unit” means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts, and any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivision.~~

**137.05 Submission of written documents to governmental units.** ~~Unless otherwise prohibited by law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted by transforming the document in electronic format, (1) A document signed or given effect with an electronic signature may be submitted to a governmental unit, but only with the consent of the governmental unit that is to receive the document.~~

(2) The Department of Administration shall promulgate rules regarding the use of electronic signatures by governmental units.

**137.06 Electronic signature.** (1) Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be signed or given effect with an electronic signature if the electronic signature meets all of the following requirements:

- ~~(a) The electronic signature is unique to the person using it.~~
- ~~(b) The electronic signature is capable of verification.~~
- ~~(c) The electronic signature is under the sole control of the person using it.~~
- ~~(d) The electronic signature is linked to the document to which it is attached or associated in such a manner that, if the document is altered after the electronic signature is created, the electronic signature is invalidated.~~

~~(e) For documents submitted to the department of financial institutions, the electronic signature conforms to any rules promulgated by the department of financial institutions.~~

~~(2) An electronic signature that satisfies all of the requirements specified in sub-(1) has the same force and effect as a manual, facsimile or other form of signature.~~

**224.30 Powers and duties of the department.** (1) in this section, "department" means the department of financial institutions.

(2) ~~The department shall promulgate rules regarding submission of written documents under s. 137.05 and the use and verification of electronic signatures under 137.06.~~

**990.01 Construction of laws; words and phrases.**

(38) SIGNATURE. If the signature of any person is required by law it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the other person's request and in the person's presence, or, subject to any applicable requirements under subch. II of ch. 137, the electronic signature of the person.

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# REPORT TO THE WISCONSIN LEGISLATURE AND DEPARTMENT OF ADMINISTRATION

Submitted December 30, 1998 by the

## COMMISSION ON THE USE OF ELECTRONIC SIGNATURES [www.esignatures.org](http://www.esignatures.org)

The Commission on the Use of Electronic Signatures (the Commission) has reviewed the report submitted October 19, 1998 by the Wisconsin Department of Financial Institutions (<http://www.wdfi.org/newsroom/esignreport.pdf>).

The current report is intended to advise the Wisconsin Department of Administration regarding the use of electronic signatures and the submission of written documents in electronic format to governmental units. We have also included proposed legislation the Commission considers necessary to implement the recommendations.

### Recommendations to the Department of Administration

- *Agency/Public Needs.* Governmental units, including state agencies, must be able to deploy technologies that will support the needs of the governmental unit and the filing public.
- *Practicality/Enforceability.* The state must be able to implement electronic signature technology in a way that is operationally practical and enforceable by law.
- *Compatibility.* The technology must be integrated with existing and planned IT infrastructure to reduce costs of deployment, administration, and support.
- *Intra-agency Considerations.* State agencies must be able to exchange signed and encrypted electronic documents with local, county, and federal government, private business, and citizens.
- *Usability.* Make it easy for customers to use electronic signatures and to apply appropriate levels of security without having to know and understand the complexity of the technology.

The Wisconsin Department of Administration is responsible for the state's technology infrastructure and must be able to standardize technologies that address different levels of security needs. Governmental units, on the other hand, must have the flexibility to decide which level of security will best address their specific applications. The Commission therefore recommends that the Department of Administration replace the Department of Financial Institutions as the rule-making authority. We do so while strongly recommending that the



process of developing rules on standard technologies involve a representative group of other state agencies and local governmental units. We also recommend that, while the Department of Administration may, through cost-benefit analysis, find it appropriate to become a Certificate Authority, it should never become the sole Certificate Authority in the state.

### **Legislation Necessary to Implement The Commission's Recommendations**

Per Section 8(e) of 1997 Wisconsin Act 306 (the "Act"), the Commission on the Use of Electronic Signatures (the "Commission") is required to include in an initial report to the Department of Administration and the legislature "any proposed legislation that the commission considers necessary to implement the recommendations." Initial report recommendations are directed toward the use of electronic signatures and the submission of written documents in electronic format to governmental units.

In considering the existing statutory language and the need for proposed legislation, the Commission kept in mind three goals that represent the underpinnings of its recommendations to the Department of Administration:

- *Trustworthiness.* In an environment where the evolution of digital and other electronic formats is dynamic, technologies that are used in conjunction with state transactions must have the trust of both the public and the governmental units that are being asked to use them. At a minimum, filing technologies that are currently in use should not be precluded. Other principles related to trust should control the choice of technologies to be used in conjunction with public transactions in the future. Because of the differing substantive needs for security, legislation should not restrict the ability of governmental units to choose technologies that provide levels of security appropriate to the filing under consideration. By the same token, governmental units that have similar security concerns should not be allowed to choose different technologies to address those concerns where a standard technology will suffice. Standardization based on functional equivalency serves the economic interests of both the government and the public.
- *Usability.* This goal focuses on user friendliness, availability and robustness of technologies that are prescribed for state transactions. Examples of current technologies that fit these usability criteria extremely well are telephonic transmissions and facsimile transmissions. Examples of technologies that are gaining a wider acceptance with time are Internet technologies. When adopting future technologies to meet functional security concerns, the Commission believes that usability of prescribed technology will be a key decision criterion.

- *Technology Neutral.* This goal focuses on not precluding the use of future technologies that can fulfill the demonstrated functional needs for security and usability. The Commission recognizes that the evolution of electronic format technologies is dynamic and thinks that legislation should not restrict the adoption of appropriate technologies that meet these functional needs.

## **1997 WISCONSIN ACT 306**

In meetings held to date, the Commission has discussed the many private transactions that are already accomplished within this state through electronic data interchange and other forms of electronic commerce. Additionally, the Commission has become aware that some regulations currently allow electronic alternatives to written signature transactions.<sup>1</sup> If the Act continues in its present form on the date it is scheduled to take effect,<sup>2</sup> those electronic transactions<sup>3</sup> as well as private transactions<sup>4</sup> have the potential to be invalidated by operation of the Act because of an overly restrictive view on authentication. The Commission does not believe that the legislature intended the Act to have that type of effect and does not believe that any state or public policy would be advanced by that result.

To facilitate the adoption of future technologies that meet the trustworthiness, usability and the technology neutral goals that have previously been enumerated, the Commission believes the provisions of the Act need to be modified.

A section by section review of the current Act follows along with suggested legislative changes to the Act.

### ***Section by Section review; Suggested Changes***

Section 6 of the current Act creates a new subchapter II to Chapter 137. It contains the essence of the legislature's treatment on electronic signatures.

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<sup>1</sup> See footnote 3 below.

<sup>2</sup> Section 9(1) of the Act provides that the substantive provisions become effective on the first day of the 12th month beginning after publication. The Act was published on July 14, 1998 and the effective date is therefore July 1, 1999.

<sup>3</sup> During its meetings, the Commission was advised that telephonic filing of unemployment compensation claims using Social Security Numbers and PINs has been recognized as an appropriate alternative to a conventional signed certification by the Department of Workforce Development. Wis. Stats. 108.08(1) requires that notice of a claim for benefits be given in a manner prescribed by the Department of Workforce Development, and DWD 129.01(2) provides the alternatives of written and telephonic certification for future claims.

<sup>4</sup> A number of transactions with companies in and outside the state of Wisconsin involve electronic data interchange. A significant portion of those transactions involve goods in excess of \$500. The Statute of Frauds section of the Wisconsin Uniform Commercial Code requires a writing for those goods signed by the person against whom enforcement is sought in order to enforce those types of transactions. These writings are typically contracts entered into between the trading partners before EDI trading begins. See Wis. Stats. 402.201.

Section 137.04 is the definitional treatment on electronic signatures. Under section 137.04(2), an “electronic signature” includes “any combination of words, letters, symbols or characters that is attached to or logically associated with an electronic record and used by a person for the purpose of authenticating a document that has been created in or transformed into an electronic format.” Consequently, no “electronic signature” exists unless it is “attached to” or “associated with” an underlying electronic document. While no separate definitional treatment of “electronic document” is provided, the Commission believes that the language modifying electronic document viz. one “that has been created in or transformed into an electronic format” provides sufficient definition. Additionally, the Commission notes that the electronic document definition is broad enough to cover the range of electronic technologies that currently exist, e.g., facsimile, telephonic transmission by voice and digital technologies. As important, it is flexible enough to cover the range of technologies that might exist in the future.

The Commission suggests that broader language at the beginning of the definition would be appropriate so as not to preclude the use of future signature technologies. Combinations of “words, letters, symbols or characters” are not an exhaustive listing of current technologies that might provide an authentication functionality which is the object of the statute. The Commission’s proposed legislation broadens the specification of signature techniques to allow the adoption of technologies that are sufficient to accomplish the intended authentication.

According to the section 137.04(2) definition, the purpose of the electronic signature is to provide an “authentication” of the underlying document with which it is associated. The Commission agrees that “authentication” is the purpose of electronic signatures. It believes, however, that the definition of “authenticate” in section 137.04(1) is inappropriate because it adopts an approach to authentication that unduly restricts the use of technologies which would appropriately address the security and usability needs of the filing public.

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This flexibility would not be allowed by the definition that currently exists in section 137.04(1) of the statutes. There, authenticate means “to validate a document in such a manner that the identity of the person who originated the document is incontrovertible and the information contained in the document is identical to that originated by the person.” This definition of authentication focuses on the ability of technologies and not on the needs of the filing public. In an Act that has a broad definition of electronic signatures, this definition is unduly restrictive. For example, assuming digital technologies, the current Act would require the use of public key-private key encryption to accomplish identity and message digest technology to accomplish integrity irrespective of whether the filing involved a corporate taxpayer or someone who was filing for a dog license. Indeed, the legality of a number of current digital transactions that utilize personal identification number (PIN) authentication techniques would be called into question. The Commission believes that this approach has negative implications for the adoption of electronic filing technologies and would discourage and not encourage the use of these technologies by filers. Additionally, it believes this definition could have the unwelcome effect of eliminating methods of electronic filing with the state that are currently allowed by statute. See the reference to telephonic certifications in footnote 3, supra. The Commission recommends that the definition of authenticate as it currently exists in section 137.04(1) be eliminated without replacement.

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Section 137.05 provides that governmental units may allow documents that are required to be submitted in writing with signature to be submitted in electronic format (i.e., with electronic signature) provided the governmental unit consents to receipt of the document in that fashion. The Commission generally agrees with this approach with the following comments.

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that the appropriate procedures were used, and assessment of whether the procedures agreed to are commercially reasonable.<sup>6</sup>

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## **STATUTORY PROVISIONS ON ELECTRONIC SIGNATURES**

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### **137.01 Notaries.**

(4) ATTESTATION. (a) Every official act of a notary public shall be attested by the notary public's written signature or electronic signature, as defined in s. 137.04 (2).

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<sup>8</sup> *But see* the recent article in the October 1998 issue of the Wisconsin Bar Bulletin entitled Wisconsin's New Probate Code where the author describes recent changes to the Wisconsin Probate Code and suggests that the trend of increasingly passing property to survivors by nonprobate means may signal a move away from formalities in the future. See <http://www.wisbar.org/wislawmag/archive/oct98/probate.html>.

<sup>9</sup> The Commission will again consider the issue of Certificate Authorities in the context of its report to the legislature scheduled for mid-1999.

**137.04 Definitions.** In this subchapter:

~~(1) “Authenticate” means to validate a document in such a manner that the identify of the person who originates the document is incontrovertible and the information contained in the document is identical to that originated by the person.~~

~~(2) (1) “Electronic signature” means any combination of words, letters, symbols or characters, or any identifier or authentication technique, that is attached to or logically associated with a document that has been created in or transformed into an electronic format ~~an electronic record~~ and used by a person ~~for the purpose~~ with the intent of authenticating a document that has been created in or transformed into an electronic format.~~

~~(3) (2) “Governmental unit” means any association, authority, board, commission, department, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts, and any political subdivision of the state or body within one or more political subdivisions which is created by law or by action of one or more political subdivision.~~

**137.05 Submission of written documents to governmental units.** ~~Unless otherwise prohibited by law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted by transforming the document in electronic format, (1) A document signed or given effect with an electronic signature may be submitted to a governmental unit, but only with the consent of the governmental unit that is to receive the document.~~

~~(2) The Department of Administration shall promulgate rules regarding the use of electronic signatures by governmental units.~~

**137.06 Electronic signature.** ~~(1) Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be signed or given effect with an electronic signature if the electronic signature meets all of the following requirements:~~

- ~~(a) The electronic signature is unique to the person using it.~~
- ~~(b) The electronic signature is capable of verification.~~
- ~~(c) The electronic signature is under the sole control of the person using it.~~
- ~~(d) The electronic signature is linked to the document to which it is attached or associated in such a manner that, if the document is altered after the electronic signature is created, the electronic signature is invalidated.~~
- ~~(e) For documents submitted to the department of financial institutions, the electronic signature conforms to any rules promulgated by the department of financial institutions.~~

~~(2) An electronic signature that satisfies all of the requirements specified in sub. (1) has the same force and effect as a manual, facsimile or other form of signature.~~



**224.30 Powers and duties of the department.** (1) in this section, "department" means the department of financial institutions.

(2) ~~The department shall promulgate rules regarding submission of written documents under s. 137.05 and the use and verification of electronic signatures under 137.06.~~

**990.01 Construction of laws; words and phrases.**

(38) SIGNATURE. If the signature of any person is required by law it shall always be the handwriting of such person or, if the person is unable to write, the person's mark or the person's name written by some other person at the other person's request and in the person's presence, or, subject to any applicable requirements under subch. II of ch. 137, the electronic signature of the person.

\*\*\*\*\*

1999

Date (time) needed

DATE  
SOON

LRB - 1729, 1

JRK + RJM  
cmj

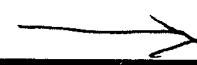
**BILL**

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: *the use and regulation of electronic signatures, granting rule-making authority, providing an exemption from emergency rule procedures and . . .*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

*Analysis by the Legislative Reference Bureau*



For the 3 titles used in an analysis, in the component bar:

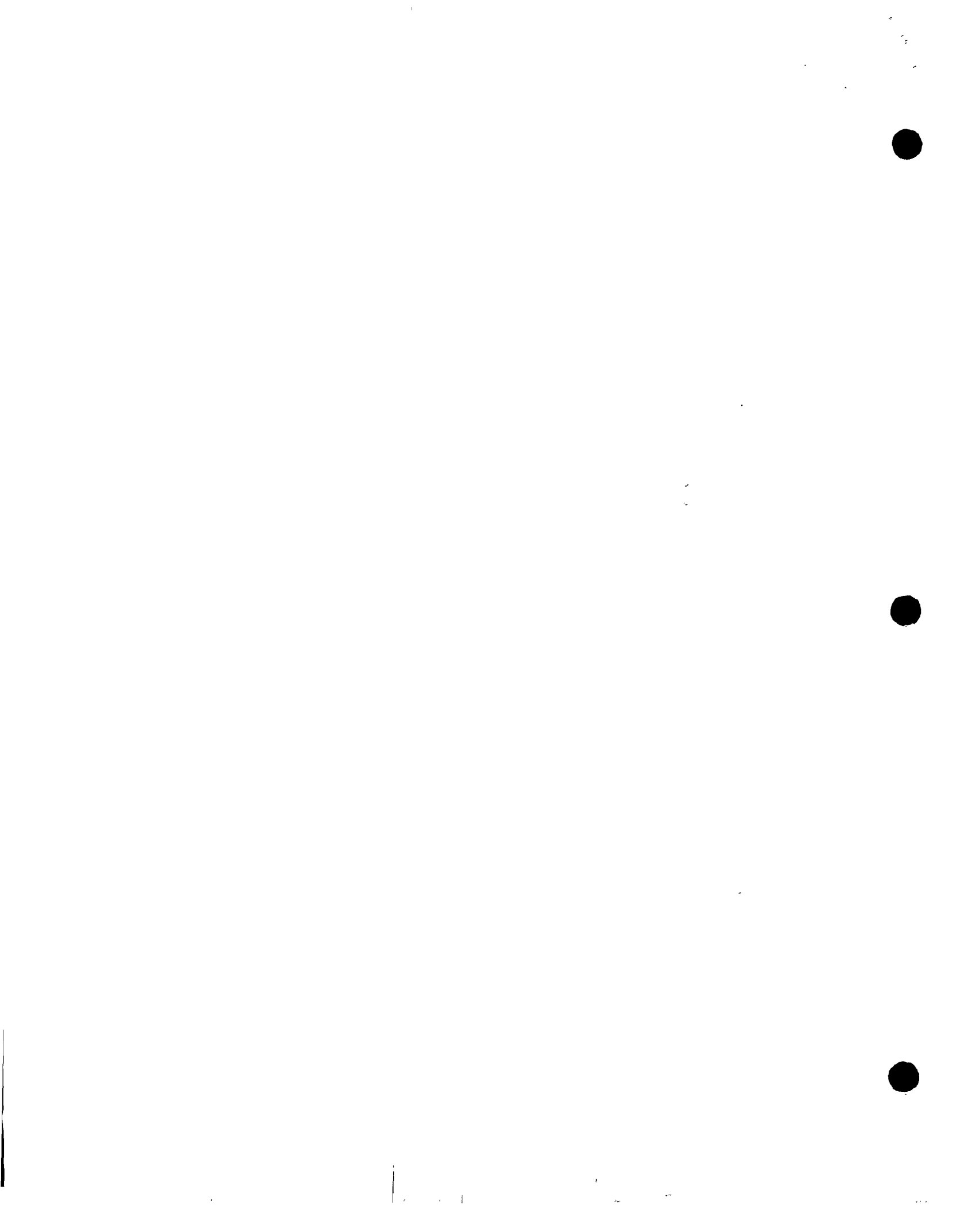
For the main heading [old =M], execute: . . . . . create → anal: → title: → head

For the subheading [old =S], execute: . . . . . create → anal: → title: → sub

For the sub-subheading [old =P], execute: . . . . . create → anal: → title: → sub-sub

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

**SECTION #.**



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1729/lins2  
...JTK&RJM:.....

Currently, unless prohibited by law, any document prepared by any person that requires a signature or that is given effect with a signature may be signed and given effect with an electronic signature if certain requirements are met. Governmental units may agree to receive signed documents electronically. Notaries public may use electronic signatures to perform their functions. Currently, in order to be valid, an electronic signature must employ a combination of words, letters, symbols or characters attached to or logically associated with a document in such a manner that the identity of the person who originates the document is incontrovertible and the information contained in the document is identical to the information originated by that person. In addition, in order to be valid, an electronic signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; must be linked to the document to which it is attached or associated, in such a manner that, if the document is altered after the signature is created, the signature is invalidated; and, for any document submitted to the department of financial institutions, must conform to rules promulgated by that department.

*must*  
This bill deletes all of the current requirements concerning the form and validity of electronic signatures. Under the bill, an electronic signature may employ any identifier or authentication technique. ~~The bill also requires~~ the department of administration ~~to promulgate~~ rules concerning the use of electronic signatures by governmental units. The rules must require, for each purpose for which a document is prepared, the use of a method for authentication of electronic signatures that is the most cost effective and that provides the greatest assurance of authenticity considering the purpose of the document.

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

This bill also deletes the requirement that the department of financial institutions promulgate rules concerning electronic signatures. Rather, under this bill,

Step m # . RP; 137.01 (1)

Section #. 137.04 (2) of the statutes is amended to read:

137.04 (2) "Electronic signature" means any combination of words, letters, symbols or characters that is attached to or logically associated with <sup>a document that is created in or transformed into</sup> an electronic record and used by a person <sup>with the intent to authenticate</sup> for the purpose of authenticating <sup>format</sup> a document that has been created in or transformed into an electronic format.

History: 1997 a. 306

, or any identifier or authentication technique,

Section #. 137.05 (title) <sup>plain space</sup>  
137.05 (title) Submission of ~~written~~ documents to governmental units.

Section #. 137.05 of the statutes is renumbered 137.05 (1) and amended to read:

137.05 (1) ~~Submission of written documents~~ Unless otherwise prohibited by law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written ~~document that is signed or given effect with an electronic signature~~ <sup>may be submitted</sup> signature may be submitted by transforming the document into electronic format, but only with the ~~consent of the governmental unit that is to receive the document.~~ <sup>consent of the governmental unit that is to receive the document.</sup>

~~NOTE: This section is created eff. 7-1-99 by 1997 Wis. Act 306~~

History: 1997 a. 306.

may be submitted to a governmental unit

(B)

x

SECTION 1. 137.05 (2) of the statutes is created to read:

137.05 (2) The department of administration shall promulgate rules concerning the use of electronic signatures by governmental units. The rules shall require, for each purpose for which a document is <sup>prepared</sup> ~~filed~~, the use of a method for authentication of electronic signatures that is the most cost effective and that provides the greatest assurance of authenticity considering <sup>the</sup> ~~that~~ purpose~~s~~ of the document.

Section #. 137.06 (1) (intro.) of the statutes is <sup>X</sup>renumbered 137.06 (1) and amended to read:

137.06 (1) <sup>AW</sup> Unless otherwise prohibited by law, any document that requires a manual, facsimile or other form of signature or that is given effect with a manual, facsimile or other form of signature may be signed or given effect with an electronic signature ~~if the electronic signature meets all of the following requirements.~~

~~History: 1997 a. 306.~~

Secraw # . RP; 137.06 (1) (a) to (e)



Section #. 137.06 (2) of the statutes is amended to read:

137.06 (2) An electronic signature ~~that satisfies all of the requirements specified in sub. (1)~~ ✓ has the same force and effect as a manual, facsimile or other form of signature.

NOTE: ~~This section is created eff. 7-1-99 by 1997 Wis. Act 306.~~

History: 1997 a. 306.

Section #. RP; 224.30 ✓

1999

Nonstat File Sequence: **AAA**

LRB -1729,1

JTK : \_\_\_\_\_ : \_\_\_\_\_

**NONSTAT SESSLAW**

1. In the component bar:

For the action phrase, execute: ..... create → action: → \*NS: → nonstat

For the budget action phrase, execute: ..... create → action: → \*NS: → 91XX

For a subsection, execute: ..... create → text: → \*NS: → sub

For a paragraph, execute: ..... create → text: → \*NS: → par

For a subdivision, execute: ..... create → text: → \*NS: → subd

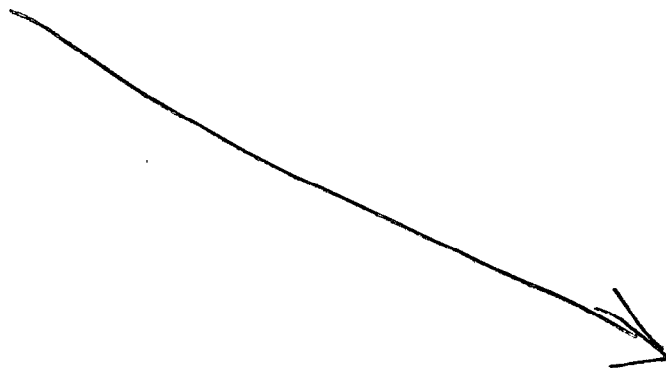
For a subdivision paragraph, execute: ..... create → text: → \*NS: → subpar

2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#a)", etc., is filled in. Below, for the budget, fill in the 9100 department code; and fill in "\_\_\_\_" or "( )" only if a "frozen" number is needed.

SECTION # \_\_\_\_\_ **[91]** \_\_\_\_\_

Nonstatutory provisions: \_\_\_\_\_

( #1 ) ( )



2 3/10



**BILL**

1 these services from the appropriations under section 20.370 (8) (mt) of the statutes,  
 2 as affected by this act, and section 20.370 (8) (mu) of the statutes on the first day of  
 3 each quarter of fiscal years 1999-2000 and 2000-01, except that the department of  
 4 natural resources shall make its first payment in fiscal year 1999-2000 on July 31,  
 5 1999, or 10 days after the effective date of this paragraph, whichever occurs later.

6 ~~(6) DATABASE OF PROPERTIES ON WHICH GROUNDWATER STANDARDS ARE EXCEEDED.~~

20  
19

7 Using the procedure under section 227.24 of the statutes, the department of ~~natural~~  
 8 ~~resources~~ <sup>administration</sup> may promulgate ~~rules~~ <sup>137.05(2)</sup> under section ~~227.24(2)~~ of the statutes, as created  
 9 by this act, for the period before the effective date of ~~the rules~~ <sup>emergency rules</sup> promulgated under <sup>permanent rules initially</sup>  
 10 section ~~227.24(2)~~ <sup>137.05(2)</sup> of the statutes, as created by this act, but not to exceed the period  
 11 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding  
 12 section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department is not required  
 13 to provide evidence that promulgating a rule under this subsection as an emergency  
 14 rule is necessary for the preservation of the public peace, health, safety or welfare  
 15 and is not required to provide a finding of emergency for a rule promulgated under  
 16 this subsection.

17 ~~(7) STUDY OF LAND APPLICATION OF SEPTAGE.~~ The department of natural resources

18 shall study this state's program for regulating the application of septage to land. No  
 19 later than September 1, 2000, the department shall submit a report presenting the  
 20 results of the study, including relevant data, identification of problems and  
 21 recommendations to improve the program, to the legislature in the manner provided  
 22 in section 13.172 (2) of the statutes, to the governor and to the department of  
 23 administration.

24 ~~(8) MEMORANDUM OF UNDERSTANDING FOR CONTAMINATED TRANSPORTATION~~

25 ~~CONSTRUCTION ZONES.~~ Not later than January 1, 2000, the secretary of natural



1999

Nonstat File Sequence: **FFF**

LRB -1729 / 1  
JR :     :    

**EFFECTIVE DATE**

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → \*NS: → **effdate**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, fill in "\_\_\_" or "( )" only if a "frozen" number is needed.

**SECTION #** \_\_\_ . **Effective date.**

( #1 ) ( ) ..... This act takes effect on July 1, 1999, or the first day of the 4th month beginning after publication, whichever is later.

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → \*NS: → **effdateE**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, fill in "\_\_\_" or "( )" only if a "frozen" number is needed.

**SECTION #** \_\_\_ . **Effective dates;** .....

..... This act takes effect on the day after publication, except as follows:

( #1 ) ( ) ..... The treatment of sections ..... of the statutes takes effect on .....

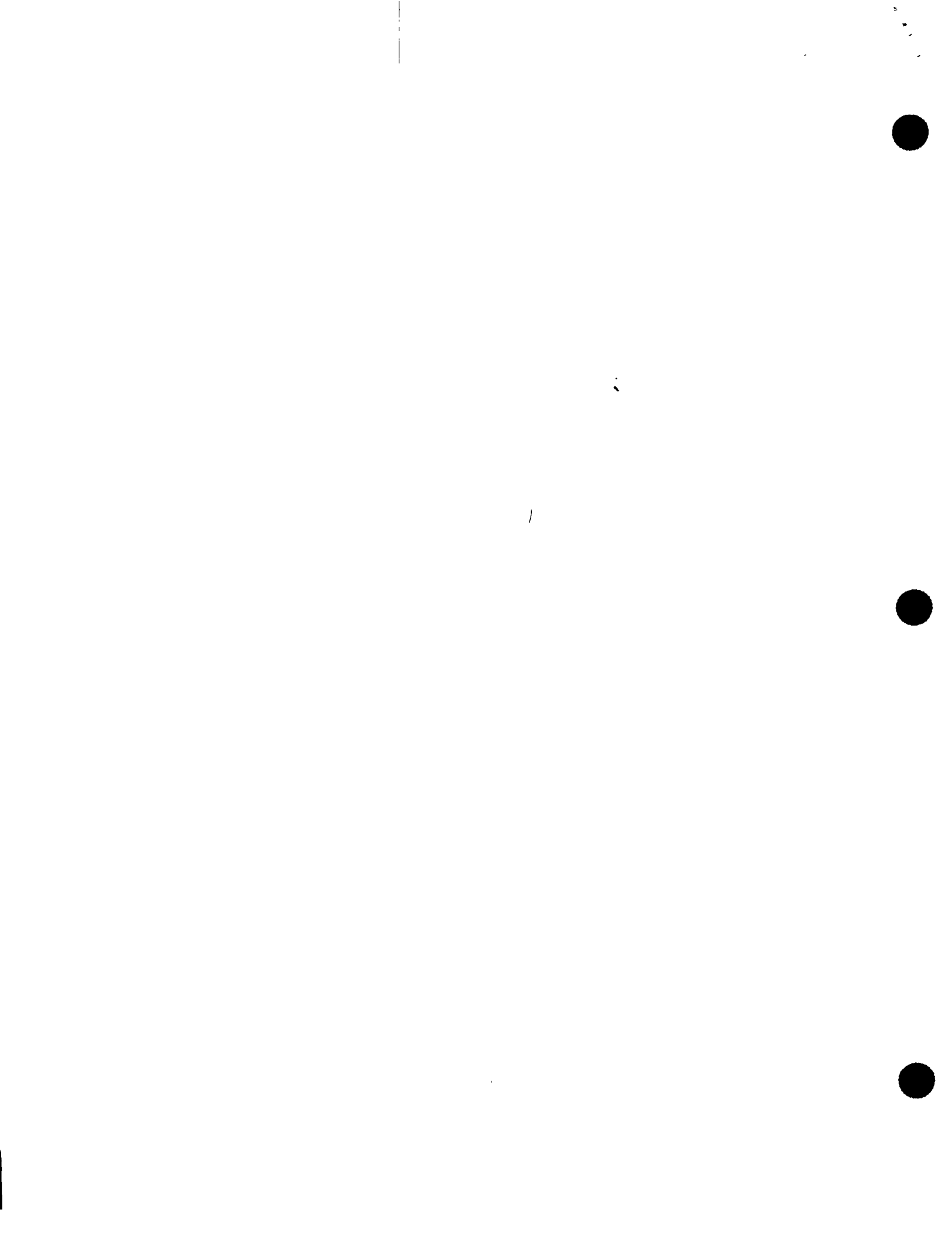
1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → \*NS: → **94XX**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically if "( #1 )", "(#2)", etc., is filled in. Below, for the budget, fill in the **9400** department code; and fill in "( )" only if a "frozen" number is needed.

**SECTION 94** \_\_\_ . **Effective dates;** .....

( #1 ) ( ) ..... The treatment of sections ..... of the statutes takes effect on .....

*(du) →*

*(end)*



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

LRB-1729/1dn

JTK.....

*cmv*

*w.p.o. -  
please  
eliminate  
extra space*

In order to facilitate the drafting of initial rules by the department of administration and to provide sufficient time to carry out the formal rule-making process, including the requirement for legislative review of proposed rules, this draft provides for a delayed effective date of July 1, 1999 or the first day of the 4th month beginning after publication. It also permits DOA to use the emergency rule-making procedure to put rules in place immediately while the formal rule-making process goes forward. Please let me know if you would like to see a different treatment of this issue.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

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

LRB-1729/1dn  
JTK:cmh:jf

March 2, 1999

In order to facilitate the drafting of initial rules by the department of administration and to provide sufficient time to carry out the formal rule-making process, including the requirement for legislative review of proposed rules, this draft provides for a delayed effective date of July 1, 1999, or the first day of the 4th month beginning after publication. It also permits DOA to use the emergency rule-making procedure to put rules in place immediately while the formal rule-making process goes forward. Please let me know if you would like to see a different treatment of this issue.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1729/P 2  
JTK&RJM:cmh:jf

Wanted THU 3/4

1999 BILL

1 *reign act*  
2 AN ACT *to repeal* 137.01 (1), 137.06 (1) (a) to (e) and 224.30; *to renumber and*  
3 *amend* 137.05 and 137.06 (1) (intro.); *to amend* 137.04 (2), 137.05 (title) and  
4 137.06 (2); and *to create* 137.05 (2) of the statutes; **relating to:** the use and  
5 regulation of electronic signatures, providing an exemption from emergency  
rule procedures and granting rule-making authority.

---

***Analysis by the Legislative Reference Bureau***

Currently, unless prohibited by law, any document prepared by any person that requires a signature or that is given effect with a signature may be signed and given effect with an electronic signature if certain requirements are met. Governmental units may agree to receive signed documents electronically. Notaries public may use electronic signatures to perform their functions. Currently, in order to be valid, an electronic signature must employ a combination of words, letters, symbols or characters attached to or logically associated with a document in such a manner that the identity of the person who originates the document is incontrovertible and the information contained in the document is identical to the information originated by that person. In addition, in order to be valid, an electronic signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; must be linked to the document to which it is attached or associated, in such a manner that, if the document is altered after the signature is created, the signature is invalidated; and, for any document submitted to the department of financial institutions, must conform to rules promulgated by that department.

**BILL**

This bill deletes all of the current requirements concerning the form and validity of electronic signatures. Under the bill, an electronic signature may employ any identifier or authentication technique. This bill also deletes the requirement that the department of financial institutions promulgate rules concerning electronic signatures. Rather, under this bill, the department of administration must promulgate rules concerning the use of electronic signatures by governmental units. The rules must require, for each purpose for which a document is prepared, the use of a method for authentication of electronic signatures that is the most cost effective and that provides the greatest assurance of authenticity considering the purpose of the document.

For further information see the *state* 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:*

137.04  
137.04

1

SECTION 1. 137.01(1) of the statutes is repealed.

2

SECTION 2. 137.04 (2) of the statutes is amended to read:

3

137.04 (2) "Electronic signature" means any combination of words, letters,

4

symbols or characters, or any identifier or authentication technique, that is attached

5

to or logically associated with a document that is created in or transformed into an

6

electronic record format and used by a person for the purpose of authenticating with

7

the intent to authenticate a document that ~~has been~~ is created in or transformed into

8

an electronic format.

9

SECTION 3. 137.05 (title) of the statutes is amended to read:

10

**137.05 (title) Submission of ~~written~~ documents to governmental units.**

11

SECTION 4. 137.05 of the statutes is renumbered 137.05 (1) and amended to

12

read:

13

137.05 (1) ~~Unless otherwise prohibited by law, any document that is required~~

14

~~by law to be submitted in writing to a governmental unit and that requires a written~~

15

~~signature may be submitted by transforming the document into electronic format,~~

**BILL**

1 ~~but~~ A document that is signed or given effect with an electronic signature may be  
2 submitted to a governmental unit only with the consent of the governmental unit  
3 that is to receive the document.

4 **SECTION 5.** 137.05 (2) of the statutes is created to read:

5 137.05 (2) The department of administration shall promulgate rules  
6 concerning the use of electronic signatures by governmental units. The rules shall  
7 require, for each purpose for which a document is prepared, the use of a method for  
8 authentication of electronic signatures that is the most cost effective and that  
9 provides the greatest assurance of authenticity and considering the purpose of the  
10 document.

11 **SECTION 6.** 137.06 (1) (intro.) of the statutes is renumbered 137.06 (1) and  
12 amended to read:

13 137.06 (1) Unless otherwise prohibited by law, any document that requires a  
14 manual, facsimile or other form of signature or that is given effect with a manual,  
15 facsimile or other form of signature may be signed or given effect with an electronic  
16 signature ~~if the electronic signature meets all of the following requirements:~~

17 **SECTION 7.** 137.06 (1) (a) to (e) of the statutes are repealed.

18 **SECTION 8.** 137.06 (2) of the statutes is amended to read:

19 137.06 (2) An electronic signature ~~that satisfies all of the requirements~~  
20 ~~specified in sub. (1)~~ has the same force and effect as a manual, facsimile or other form  
21 of signature.

22 **SECTION 9.** 224.30 of the statutes is repealed.

23 **SECTION 10. Nonstatutory provisions.**

24 (1) Using the procedure under section 227.24 of the statutes, the department  
25 of administration may promulgate emergency rules under section 137.05 (2) of the

**BILL**

1 statutes, as created by this act, for the period before the effective date of permanent  
2 rules initially promulgated under section 137.05 (2) of the statutes, as created by this  
3 act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the  
4 statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the  
5 department is not required to provide evidence that promulgating a rule under this  
6 subsection as an emergency rule is necessary for the preservation of the public peace,  
7 health, safety or welfare and is not required to provide a finding of emergency for a  
8 rule promulgated under this subsection.

**SECTION 11. Effective date.**

9  
10 (1) This act takes effect on July 1, 1999, or on the first day of the 4th month  
11 beginning after publication, whichever is later.

12 (END)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1729/3  
JTK&RJM:cmh:jf  
cmj

Wanted THU 3/11

1999 BILL

refer  
cat

1 AN ACT *to repeal* 137.04 (1), 137.06 (1) (a) to (e) and 224.30; *to renumber and*  
2 *amend* 137.05 and 137.06 (1) (intro.); *to amend* 137.04 (2), 137.05 (title) and  
3 137.06 (2); and *to create* 137.05 (2) of the statutes; **relating to:** the use and  
4 regulation of electronic signatures, providing an exemption from emergency  
5 rule procedures and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

Currently, unless prohibited by law, any document prepared by any person that requires a signature or that is given effect with a signature may be signed and given effect with an electronic signature if certain requirements are met. Governmental units may agree to receive signed documents electronically. Notaries public may use electronic signatures to perform their functions. Currently, in order to be valid, an electronic signature must employ a combination of words, letters, symbols or characters attached to or logically associated with a document in such a manner that the identity of the person who originates the document is incontrovertible and the information contained in the document is identical to the information originated by that person. In addition, in order to be valid, an electronic signature must be unique to the person using it; must be capable of verification; must be under the sole control of the person using it; must be linked to the document to which it is attached or associated, in such a manner that, if the document is altered after the signature is created, the signature is invalidated; and, for any document submitted to the department of financial institutions, must conform to rules promulgated by that department.

**BILL**

This bill deletes all of the current requirements concerning the form and validity of electronic signatures. Under the bill, an electronic signature may employ any identifier or authentication technique. This bill also deletes the requirement that the department of financial institutions promulgate rules concerning electronic signatures. Rather, under this bill, the department of administration must promulgate rules concerning the use of electronic signatures by governmental units. ~~The rules must require, for each purpose for which a document is prepared, the use of a method for authentication of electronic signatures that is the most cost effective and that provides the greatest assurance of authenticity considering the purpose of the document.~~

For further information see the *state* 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:*

1           **SECTION 1.** 137.04 (1) of the statutes is repealed.

2           **SECTION 2.** 137.04 (2) of the statutes is amended to read:

3           137.04 (2) "Electronic signature" means any combination of words, letters,  
4 symbols or characters, or any identifier or authentication technique, that is attached  
5 to or logically associated with a document that is created in or transformed into an  
6 electronic record format and used by a person for the purpose of authenticating with  
7 the intent to authenticate a document that has been is created in or transformed into  
8 an electronic format.

9           **SECTION 3.** 137.05 (title) of the statutes is amended to read:

10           **137.05 (title) Submission of ~~written~~ documents to governmental units.**

11           **SECTION 4.** 137.05 of the statutes is renumbered 137.05 (1) and amended to  
12 read:

13           137.05 (1) ~~Unless otherwise prohibited by law, any document that is required~~  
14 ~~by law to be submitted in writing to a governmental unit and that requires a written~~  
15 ~~signature may be submitted by transforming the document into electronic format,~~

**BILL**

1 ~~but~~ A document that is signed or given effect with an electronic signature may be  
2 submitted to a governmental unit only with the consent of the governmental unit  
3 that is to receive the document.

4 **SECTION 5.** 137.05 (2) of the statutes is created to read:

5 137.05 (2) The department of administration shall promulgate rules  
6 concerning the use of electronic signatures by governmental units. ~~The rules shall~~  
7 ~~require, for each purpose for which a document is prepared, the use of a method for~~  
8 ~~authentication of electronic signatures that is the most cost effective and that~~  
9 ~~provides the greatest assurance of authenticity and considering the purpose of the~~  
10 ~~document.~~

11 **SECTION 6.** 137.06 (1) (intro.) of the statutes is renumbered 137.06 (1) and  
12 amended to read:

13 137.06 (1) Unless otherwise prohibited by law, any document that requires a  
14 manual, facsimile or other form of signature or that is given effect with a manual,  
15 facsimile or other form of signature may be signed or given effect with an electronic  
16 signature ~~if the electronic signature meets all of the following requirements:~~

17 **SECTION 7.** 137.06 (1) (a) to (e) of the statutes are repealed.

18 **SECTION 8.** 137.06 (2) of the statutes is amended to read:

19 137.06 (2) An electronic signature ~~that satisfies all of the requirements~~  
20 ~~specified in sub. (1)~~ has the same force and effect as a manual, facsimile or other form  
21 of signature.

22 **SECTION 9.** 224.30 of the statutes is repealed.

23 **SECTION 10. Nonstatutory provisions.**

24 (1) Using the procedure under section 227.24 of the statutes, the department  
25 of administration may promulgate emergency rules under section 137.05 (2) of the

**BILL**

1 statutes, as created by this act, for the period before the effective date of permanent  
2 rules initially promulgated under section 137.05 (2) of the statutes, as created by this  
3 act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the  
4 statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the  
5 department is not required to provide evidence that promulgating a rule under this  
6 subsection as an emergency rule is necessary for the preservation of the public peace,  
7 health, safety or welfare and is not required to provide a finding of emergency for a  
8 rule promulgated under this subsection.

**SECTION 11. Effective date.**

9  
10 (1) This act takes effect on July 1, 1999, or on the first day of the 4th month  
11 beginning after publication, whichever is later.

12 (END)



**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 3/11/99

**To:** Representative Hutchison

**Relating to LRB drafting number:** LRB-1729

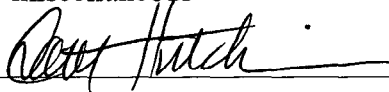
**Topic**

Use of electronic signatures

**Subject(s)**

Fin. Inst. - miscellaneous, State Government - miscellaneous

1. **JACKET** the draft for introduction \_\_\_\_\_



in the **Senate** \_\_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction  \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jeffery T. Kuesel, Managing Attorney  
Telephone: (608) 266-6778