

Certainly a major factor in proper training relates to safety. The apprenticeship committee took a number of significant steps to increase the safety of apprentices on the job.

First the committee adopted a provision that **“first year apprentice shall not work on or be exposed to energized circuits.”** Secondly, ABC requires all approved trainers to have a formal written **safety program** and a written **Hazardous Communication** plan. Finally, the apprentices must complete the **OSHA 10** hour program and **First Aid / CPR** in the first year of the indenture.

Thirty three percent of all fatalities in the construction industry are attributable to falls (33%), followed by, struck-by (22%), caught-in / between (18%) and electrocutions (17%). Looking at the statistic for electrical related fatalities, we see that majority of victims are non-electricians.

Proposal: Enact statutory restrictions on the ability of the Department of Workforce Development ability to require apprentice to journeyman jobsite ratios.

Chapter 221 (State Banks)

3. Proposal:

1. **Amend 221.0901(3)(ba) 1 as follows:** Merge or consolidate with an in-state bank holding company or in-state bank.
2. **Delete the following from 221.0901(8)(a):** the division may not approve an application ~~by an out of state bank holding company~~ under sub. (3)(a) other than an application by an in-state bank holding company or an in-state bank unless the in-state bank to be acquired, or all in-state bank subsidiaries of the in-state bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for at least 5 years.
3. **Delete and amend 221.0901(8)(b) as follows:** The division may approve an application under sub. (3)(a) other than an application by an in-state bank holding company or an in-state bank for an acquisition of an in-state bank holding company that owns one or more in-state banks that have been in existence for less than 5 years, if the ~~out of state bank holding company~~ applicant divests itself of those in-state banks within 2 years after the date of acquisition of the in-state bank holding company by the ~~out of state bank holding company~~ applicant.

Chapter 241 (Fraudulent Contracts)

4. Proposal:

SECTION 1. 241.021 of the statutes is created to read:

241.021 Credit Agreements.

(1) **Definitions.**

Commitment to
lend

(a) "Credit agreement" means an agreement or commitment by a financial institution to lend or forbear repayment of money, to otherwise extend credit, or to make any other financial recommendation and not in connection with the issuance or use of credit cards.

(i.e.
loan
commitment)

(b) "Financial institution" means a federally or state chartered bank, savings bank or savings loan association, or a holding company, subsidiary or affiliate of such a bank, savings bank or savings and loan association.

(c) "Debtor" means a person who obtains credit or seeks a credit agreement or claims the existence of a credit agreement with a financial institution or who owes money to a financial institution. X

shall be

(2) Credit Agreements to Be in Writing.

(a) ~~A debtor may not maintain an action on or in any way related to any credit agreement unless the credit agreement is in writing, expresses an agreement or commitment to lend money or extend credit or delay or forebear repayment of money, sets forth the relevant terms and conditions, and is signed by the financial institution and the debtor.~~ or both

(b) This section does not apply to any credit agreement the proceeds of which are \$25,000 or less and are used by the debtor primarily for personal, family or household purposes.

(c) The rights and obligations of the financial institution and the debtor shall be determined solely from the written credit agreement, and any prior oral agreements between the financial institution and the debtor are superseded by and merged into the credit agreement. A credit agreement may not be varied by any oral agreements or discussions that occurred before or contemporaneously with the execution of the credit agreement.

(3) Actions Not Considered Agreements.

(a) The following actions do not give rise to a claim, counter-claim or defense by a debtor that a new credit agreement is created, unless the agreement satisfies the requirements of subsection (2):

1. the rendering of financial advice by a financial institution to a debtor;
2. the consultation by a financial institution with a debtor; or
3. the agreement by a financial institution to modify or amend an existing credit agreement or to otherwise take certain actions, such as entering into a new credit agreement, forbearing from exercising remedies in connection with an existing credit agreement, or rescheduling or extending installments due under an existing credit agreement.

(b) A credit agreement may not be implied from the relationship, fiduciary or otherwise, of the financial institution and the debtor, or by promissory estoppel.

Delete credit cards &
open-end stuff

SECTION 2. Effective Date. This Act takes effect with respect to credit agreements entered into on or after the day after publication.

Chapter 295 (Nonmetallic Mining Reclamation)

5. Issue: Nonmetallic Mining Reclamation (Chapter 295) – Financial Assurance Clarification

Clarify the nonmetallic mining reclamation law (Chapter 295) to ensure that operators may not be required to post financial assurance with more than one unit of government (regulatory authority) in relation to same mining site.

Background: Under Chapter 295, counties are required to administer the state nonmetallic mining reclamation program. Also, a city, village or town may elect to administer the program within its jurisdiction. The law also recognizes pre-existing municipal ordinances in s. 295.14 (2) provided the ordinance is as restrictive as the state NR 135 rules, or amended to be as restrictive. A component of administering the reclamation program is the tabulation and collection of financial assurance on disturbed acreage equal to the estimated amount it would cost the regulating authority to complete reclamation in the event of owner/operator default.

Prior to the adoption of the uniform statewide reclamation law, various municipalities regulated reclamation of nonmetallic mining sites through local zoning. A city, town or village may choose not to administer the state reclamation program but may still have an ordinance in place regulating aspects of pre-existing mine sites, including the posting of financial security to guarantee reclamation. Duplicate regulation can and has occurred. Mine operators may be subject to duplicate filing of financial assurance on the same mine site in situations where the county is the NR 135 regulatory authority but the site is also covered by a local zoning financial assurance requirement.

Proposal: Amend s. 295.14 to specify the following:

If a city, village or town, which is not a regulatory authority as defined in NR 135.03 (20), requires a filing of financial assurance for nonmetallic mining reclamation, the unit of government serving as the regulatory authority shall credit the value of the security assigned to the city, village or town against the amount of financial assurance an operator is required to submit for a mining site regulated under this chapter.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3380/2-1
...
kjf

This week
10/14

~~RDM~~ RCT / ~~MES~~
MDK / MES / GMM
RJM

O - NOTES
GMM
RJM
MDK

Gen

AN ACT ... relating to: administrative rule-making procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, the regulation of electric generating facilities and transmission lines, ^{partial} deregulation of telecommunication ^{services} comprehensive planning by local governmental units, apprentice-to-journeyman job-site ratios, the acquisition of in-state banks and in-state bank holding companies, credit agreements, and granting rule-making authority.

high-voltage

Analysis by the Legislative Reference Bureau

Introduction

This bill makes various changes relating to administrative rule-making procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, the regulation of electric generating facilities and transmission lines, the deregulation of telecommunication ^{services} systems, comprehensive planning by local governmental units, apprentice-to-journeyman job-site ratios, the acquisition of in-state banks and in-state bank holding companies, and credit agreements.

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Apprenticeship-to-journeyman job-site ratios

Under current law, the Department of Workforce Development (DWD) may determine reasonable classifications, promulgate rules, issue general or special orders, hold hearing, make findings, and render orders as necessary to oversee the apprenticeship programs provided in this state.

~~TO SUBJECT MATI~~

This bill prohibits DWD from prescribing, whether by promulgating a rule, issuing a general or special order, or otherwise, the ratio of apprentices to journeymen that an employer may have at a job site.

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

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

SECTION ~~10~~ 106.01 (9) of the statutes is amended to read:

106.01 (9) The Subject to s. 106.04, the department may investigate, fix reasonable classifications, issue promulgate rules and, issue general or special orders, and, hold hearings, make findings, and render orders upon its findings as shall be necessary to carry out the intent and purposes of this section. The investigations, classifications, hearings, findings, and orders shall be made as provided in s. 103.005. Except as provided in sub. (8), the penalties specified in s. 103.005 (12) apply to violations of this section. Orders issued under this subsection are subject to review under ch. 227.

History: 1971 c. 228 s. 43; 1977 c. ~~24~~ s. 1651; 1977 c. 273; 1993 a. 492; 1995 a. 27; 1999 a. 83; 2001 a. 16; 2003 a. 33.

SECTION ~~2~~ 106.025 (4) of the statutes is amended to read:

106.025 (4) In order that the apprentice may qualify at the end of apprenticeship as a skilled mechanic in the art of installing plumbing work, the department, subject to s. 106.04, may prescribe the level of supervision of an apprentice and the character of plumbing work that the apprentice may do during the 3rd year of the apprenticeship term. An apprentice in the 4th or 5th year of the apprenticeship term may install plumbing under the direction or supervision of a master or journeyman plumber without either the master or journeyman being physically present, provided that the master plumber in charge shall be responsible for the work.

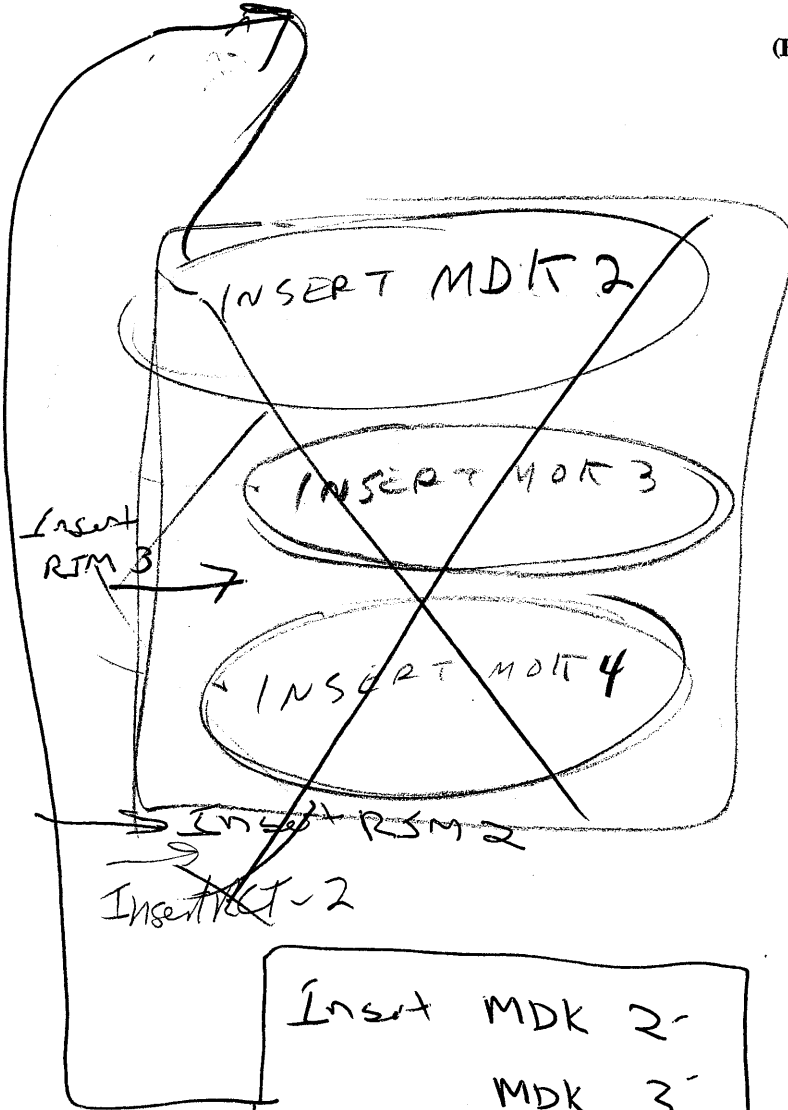
History: 1971 c. 40; 1971 c. 154 s. 79 (2); 1979 c. 221; 1981 c. 60; 1993 a. 399; 1995 a. 286 ss. 1, 2; Stats. 1995 s. 106.025; 1999 a. 83.

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SECTION ~~3~~ # 106.04 of the statutes is created to read:

106.04 **Apprentice-to-journeyman job-site ratio regulation prohibited.** The department may not prescribe, whether by promulgating a rule, issuing a general or special order, or otherwise, the ratio of apprentices to journeyman^{se} that an employer may have at a job site.

(END)



- Insert MDK 2-
- MDK 3-
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- RSM 3-
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D-Note

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INSERT MDK1:

Large electric generating facilities and high-voltage transmission lines

Under current law, a person may not begin to construct certain large electric generating facilities or high-voltage transmission lines unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility or line. The process for the PSC to consider an application for a CPCN is subject to various deadlines. One deadline requires the PSC to take final action on an application within 180 days after the application is completed. Under certain circumstances, a court may extend the deadline by an additional 180 days. If the PSC fails to take final action within the deadline, current law provides that the PSC is considered to have issued the CPCN, unless another state is also taking action on the same or a related application. Under this bill, the PSC is considered to have issued the CPCN even if another state is also taking action on the same or a related application.

Also under current law, at least 60 days before a person applies for a CPCN for a large electric transmission facility or high-voltage transmission line, the person must provide an engineering plan regarding the facility or line to the Department of Natural Resources (DNR). Under the bill, this requirement applies only to applications for large electric generating facilities, and not to applications for high-voltage transmission lines.

sp. out
~~In addition, current law requires the PSC to prepare a strategic energy assessment every 2 years that evaluates the adequacy and reliability of the state's electricity supplies. An assessment must describe, among other things, large electric generating facilities and high-voltage transmission lines on which utilities plan to begin construction within 3 years. The bill requires an assessment to describe large electric generating facilities and high-voltage transmission lines on which utilities plan to begin construction within 3 years, rather than 3 years.~~
Start

Partial deregulation of telecommunications services

Under current law, a person may petition the PSC to begin proceedings for determining whether to partially deregulate certain telecommunications services. The PSC may also begin such proceedings on its own motion. If the PSC makes certain findings regarding competition for such telecommunications services, the PSC may issue an order suspending specified provisions of law. Current law does not impose any deadlines on such proceedings.

The bill requires the PSC to complete the proceedings no later than 120 days after a person files a petition. In addition, if the PSC begins proceedings based on its own motion, the proceedings must be completed no later than 120 days after the PSC provides notice of its motion. If the PSC fails to complete the proceedings and, if appropriate, issue an order within the deadline, the bill provides for the suspension of any provisions of law that are specified in the petition or in the PSC's motion.

(red draft)

INSERT MDK3:

~~SECTION 1.~~ 196.491 (1) (d) of the statutes is amended to read:

196.491 (1) (d) "Electric utility" means any public utility, as defined in s. 196.01, which is involved in the generation, distribution and sale of electric energy, and any corporation, company, individual or association, and any cooperative association, which owns or operates, or plans within the next 3 7 years to construct, own or operate, facilities in the state.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33.

~~SECTION 2.~~ 196.491 (2) (a) 3. of the statutes is amended to read:

196.491 (2) (a) 3. Identify and describe large electric generating facilities on which an electric utility plans to commence construction within 3 7 years.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33.

~~SECTION 3.~~ 196.491 (2) (a) 3m. of the statutes is amended to read:

196.491 (2) (a) 3m. Identify and describe high-voltage transmission lines on which an electric utility plans to commence construction within 3 7 years.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33.

~~SECTION 4.~~ 196.491 (2) (g) of the statutes is amended to read:

196.491 (2) (g) No sooner than 30 and no later than 90 days after copies of the draft are issued under par. (b), the commission shall hold a hearing on the draft which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in an administrative district, established by executive order 22, issued August 24, 1970, which the commission determines will be significantly affected by facilities on which an electric utility plans to commence construction within 3 7 years. The commission may thereafter adjourn the hearing to other locations or may conduct the hearing by interactive video conference or other electronic method. Notice of such hearing shall be given by class 1 notice, under ch. 985, published in

1 the official state newspaper and such other regional papers of general circulation as
 2 may be designated by the commission. At such hearing the commission shall briefly
 3 describe the strategic energy assessment and give all interested persons an
 4 opportunity, subject to reasonable limitations on the presentation of repetitious
 5 material, to express their views on any aspect of the strategic energy assessment.
 6 A record of the hearing shall be made and considered by the commission as comments
 7 on the strategic energy assessment under par. (e).

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33.

8 **SECTION 5**, 196.491 (3) (a) 3. a. of the statutes is amended to read:

9 196.491 (3) (a) 3. a. At least 60 days before a person files an application for a
 10 large electric generating facility under subd. 1., the person shall provide the
 11 department with an engineering plan showing the location of the facility, a
 12 description of the facility, including the major components of the facility that have
 13 a significant air, water or solid waste pollution potential, and a description of the
 14 anticipated effects of the facility on air and water quality. Within 30 days after a
 15 person provides an engineering plan, the department shall provide the person with
 16 a listing of each department permit or approval which, on the basis of the information
 17 contained in the engineering plan, appears to be required for the construction or
 18 operation of the large electric generating facility.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33.

19 **SECTION 6**, 196.491 (3) (e) of the statutes is amended to read:

20 196.491 (3) (e) If the application does not meet the criteria under par. (d), the
 21 commission shall reject the application or approve the application with such
 22 modifications as are necessary for an affirmative finding under par. (d). The
 23 commission may not issue a certificate of public convenience and necessity for a large

1 electric generating facility until the department has issued all permits and
2 approvals identified in the listing specified in par. (a) 3. a. that are required prior to
3 construction.

History: 1975 c. 68, 199; 1979 c. 221, 361; 1983 a. 53 s. 114; 1983 a. 192, 401; 1985 a. 182 s. 57; 1989 a. 31; 1993 a. 184; 1995 a. 27 ss. 9116 (5), 9126 (19); 1995 a. 227, 409; 1997 a. 27, 35, 204; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 c. 33.

4 SECTION ~~7~~ 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g).

5 SECTION ~~8~~ 196.491 (3) (g) 1m. of the statutes is repealed.

6 **INSERT MDK5:**

7 ~~(8)~~ ENGINEERING PLANS. The treatment of section 196.491 (3) (a) 3. a. of the
8 statutes first applies to engineering plans provided to the Department of Natural
9 Resources on the effective date of this subsection.

10 ~~(9)~~ CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY INVOLVING OTHER STATES.
11 The treatment of section 196.491 (3) (g) 1. and 1m. of the statutes first applies to
12 applications filed on the effective date of this subsection.

INSERT ANALYSIS ~~RM~~ RJM 1

Acquisitions of in-state banks and bank holding companies

Current law specifies certain requirements applicable to the acquisition of an in-state bank or in-state bank holding company by an out-of-state bank holding company. This bill applies those requirements to similar acquisitions by out-of-state banks.

Lawsuits concerning credit agreements

With certain exceptions, this bill prohibits a debtor under a credit agreement from bringing a lawsuit against a bank, savings bank, savings and loan association or any affiliate of such an institution (financial institution) based upon the credit agreement unless the credit agreement is in writing, sets forth relevant terms and conditions, and is signed by the financial institution and the debtor. This prohibition does not apply if the credit agreement involves a credit card or other like device or if the total amount financed under the credit agreement is \$25,000 or less and the debtor enters into the agreement for personal, family, or household purposes.

Under current law, when two parties enter into a written credit agreement and intend the writing to be the final expression of their agreement, the terms of the writing generally may not be varied or contradicted by evidence of any prior written or oral agreement, except in cases of fraud, duress, or mutual mistake. Under this bill, in any lawsuit arising out of a written credit agreement, the terms of the writing may not be contradicted by evidence of any prior agreement or of any contemporaneous oral agreement. The bill is silent with regard to fraud, duress, and mutual mistake.

Currently, under the doctrine of promissory estoppel, the existence of an enforceable contract may be implied if a person makes a promise, the promise is one which the person should reasonably expect to induce action or forbearance of a definite and substantial character, the promise induces such action or forbearance, and injustice can be avoided only by enforcement of the promise. This bill provides that the existence of an enforceable credit agreement may not be implied based upon the doctrine of promissory estoppel. *End of insert*

INSERT (LPS—PLEASE INSERT AND THAN SORT)

Insert RJM 2
SECTION ~~1~~ 221.0901 (3) (a) 1. of the statutes is amended to read:

221.0901 (3) (a) 1. Merge or consolidate with an in-state bank holding company
or in-state bank.

History: 1995 a. 336; 1997 a. 146

SECTION ~~2~~ 221.0901 (8) (a) and (b) of the statutes are amended to read:

221.0901 (8) (a) Except as provided in pars. (b) and (c), the division may not approve an application ~~by an out-of-state bank holding company~~ under sub. (3) (a),

other than an application by an in-state bank holding company or in-state bank, unless the in-state bank to be acquired, or all in-state bank subsidiaries of the in-state bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for at least 5 years.

History: 1995 a. 336; 1997 a. 146.

(b) The Except as otherwise provided in this paragraph, the division may approve an application under sub. (3) (a) for an acquisition of an in-state bank holding company that owns one or more in-state banks that have been in existence for less than 5 years, if the out-of-state bank holding company applicant divests itself of those in-state banks within 2 years after the date of acquisition of the in-state bank holding company by the out-of-state bank holding company applicant. This paragraph does not apply if the applicant is an in-state bank holding company or in-state bank.

History: 1995 a. 336; 1997 a. 146.

~~SECTION 3~~ [✓] 241.023 of the statutes is created to read:

241.023 Credit agreements. (1) DEFINITIONS. (a) "Affiliate" of a bank, savings bank, or savings and loan association means a business entity that controls, is controlled by, or is under common control with the bank, savings bank, or savings and loan association.

(b) "Credit agreement" means an agreement between a financial institution and another person, pursuant to which the financial institution grants the person the right to defer payment of debt, incur debt and defer its payment, or purchase goods, services, or interests in land on a time-price basis.

(c) "Debtor" means the person who enters into a credit agreement with a financial institution.

(d) "Financial institution" means a bank, savings bank, or savings and loan association organized under the laws of this state, another state, or the United States and any affiliate of such a bank, savings bank, or savings and loan.

(e) "Open-end credit plan" means an agreement, pursuant to which credit is extended on an account; the financial institution may permit the person to whom credit is extended to obtain goods or services on credit or obtain loans, from time to time, directly from the financial institution or indirectly by use of a credit card or other like device; the person to whom credit is extended may pay the balance in full or in installments; and the financial institution may assess a finance charge from time to time on an outstanding balance.

(2) WRITING REQUIRED; EXCEPTIONS. (a) Except as provided in par. (b), a debtor may maintain an action that arises out of a credit agreement only if the credit agreement is in writing, sets forth relevant terms and conditions, and is signed by the financial institution and the debtor.

(b) Paragraph (a) does not apply to an action that arises out of any of the following:

1. A credit agreement that is an open-end credit plan, pursuant to which the debtor may obtain goods or services on credit through the use of a credit card or other like device.

2. A credit agreement in which the total amount financed is \$25,000 or less and which the debtor enters into for personal, family, or household purposes.

(3) PAROL OR EXTRINSIC EVIDENCE RESTRICTED. In any action authorized under sub. (2) (a), the terms of the credit agreement may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.

(4) PROMISSORY ESTOPPEL INAPPLICABLE. A promise by a financial institution to grant a person the right to defer payment of debt, incur debt and defer its payment, or purchase goods, services, or interests in land on a time^v-price basis may not be enforced under the doctrine of promissory estoppel. *Cent of insert)*

~~SECTION 4~~ **Initial applicability** *Apply for financial institution*

(1) LAWSUITS CONCERNING CREDIT AGREEMENTS. The treatment of section 241.023^v of the statutes first applies to actions commenced on the effective date of this subsection.^v

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RJM3*

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INS RCT-1

Financial assurance for nonmetallic mining reclamation

Current law requires counties to administer ordinances to ensure that nonmetallic mining sites are reclaimed. "Nonmetallic" mining means extracting substances like gravel and stone. Among other things, nonmetallic mining reclamation ordinances must require operators to provide financial assurance to ensure that the nonmetallic mine will be reclaimed. This bill provides that if a city, village, or town requires an operator to provide financial assurance for nonmetallic mining reclamation, the county must credit the value of that financial assurance toward the amount that the operator is required to provide under the county ordinance. X

INS RCT-2

SECTION ~~1~~ # 295.13 (4) of the statutes is created to read: ✓

295.13 (4) CREDITING OF FINANCIAL ASSURANCE. If a nonmetallic mining site is subject to a county ordinance under sub. (1) or (2) and the city, village, or town in which a nonmetallic mining site is located required the operator of the mining site to provide financial assurance for nonmetallic mining reclamation of the nonmetallic mining site, the county shall credit the value of the financial assurance provided to the city, village, or town against the amount of financial assurance that the operator is required to provide under the county ordinance. X

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3380/?insMES

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~~INSANE~~
Comprehensive planning by local governmental units

Under the current law popularly known as the "Smart Growth" statute, if a local governmental unit (city, village, town, county, or regional planning commission) creates a comprehensive plan (a zoning development plan or a zoning master plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use.

Beginning on January 1, 2010, under Smart Growth, any program or action of a local governmental unit that affects land use must be consistent with that local governmental unit's comprehensive plan. The actions to which this requirement applies include zoning ordinances, municipal incorporation procedures, annexation procedures, agricultural preservation plans, and impact fee ordinances. Also beginning on January 1, 2010, under Smart Growth, if a local governmental unit engages in any program or action that affects land use, the comprehensive plan must contain at least all of the required planning elements.

Before the plan may take effect, however, a local governmental unit must comply with a number of requirements, such as adopting written procedures that are designed to foster public participation in the preparation of the plan.

Under this bill, before the plan may take effect, a local governmental unit must provide written notice to all owners of property, and leaseholders who have an interest in property pursuant to which the persons may extract nonmetallic mineral resources, in which the allowable use or intensity of use, of the property, is changed by the comprehensive plan, and must create written procedures that describe the methods the local governmental unit will use to distribute elements of a comprehensive plan to owners of, and other persons who have such interests in, such property.

(end of insert)
Insert MES2

SECTION 1. 66.1001 (2) (e) of the statutes is amended to read:

66.1001 (2) (e) *Agricultural, natural and cultural resources element.* A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical

and cultural resources, community design, recreational resources and other natural resources.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33.

SECTION 2. 66.1001 (4) (a) of the statutes is amended to read:

66.1001 (4) (a) The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services, and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative, or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments. The written procedures shall describe the methods the governing body of a local governmental unit will use to distribute proposed, alternative, or amended elements of a comprehensive plan to owners of property, or to persons who have a leasehold interest in property pursuant to which the persons may extract nonmetallic mineral resources in or on property, in which the allowable use or intensity of use, of the property, is changed by the comprehensive plan.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33.

SECTION 3. 66.1001 (4) (e) of the statutes is created to read:

66.1001 (4) (e) At least 30 days before the hearing described in par. (d) is held, a local governmental unit shall provide written notice to all owners of property, and all leaseholders who have an interest in property pursuant to which the persons may extract nonmetallic mineral resources, in which the allowable use or intensity of use, of the property, is changed by the comprehensive plan, including all of the following:

1. An operator who has obtained, or made application for, a permit that is described under s. 295.12 (3) (d).
2. A person who has registered a marketable nonmetallic mineral deposit under s. 295.20.
3. Any other person who the local governmental unit knows has a property interest in nonmetallic mineral resources in the jurisdiction.

(end of insert)

INSERT MDK 2

2003 - 2004 LEGISLATURE

LRBa0950/1
MDK:kmg:jf

ASSEMBLY AMENDMENT ,
TO 2003 ASSEMBLY BILL 486

1 ~~At the locations indicated, amend the bill as follows:~~

2 ~~1. Page 2, line 1: after "applications," insert "petitions, and motions,".~~

3 ~~2. Page 2, line 2: after "applications," insert "petitions, and motions,".~~

4 ~~3. Page 54, line 2: after that line insert:~~

5 ~~SECTION 366.~~ [#] 196.195 (5m) of the statutes is created to read:

6 196.195 (5m) TIME LIMITATION ON COMMISSION ACTION. (a) No later than 120 days
7 after the filing of a petition under sub. (2) (a), the commission shall complete the
8 proceedings under subs. (2), (3), and (4), and, if appropriate, enter an order under
9 sub. (5). If the commission fails to complete the proceedings and, if appropriate, enter
10 an order before that deadline, the petition is considered to be granted without
11 condition by the commission and any provisions of law under sub. (5) that are
12 specified in the petition are considered to be suspended by the commission.

-2-
INSERT MDIT 2
(cont'd)

1 (b) No later than 120 days after the commission provides notice of its own
2 motion under sub. (2) (a), the commission shall complete the proceedings under subs.
3 (2), (3), and (4), and, if appropriate, enter an order under sub. (5). If the commission
4 fails to complete the proceedings and, if appropriate, enter an order before that
5 deadline, the motion is considered to be granted without condition by the commission
6 and any provisions of law under sub. (5) that are specified in the motion are
7 considered to be suspended by the commission.

8 SECTION ~~36E~~. 196.195 (10) of the statutes is amended to read:

9 196.195 (10) REVOCATION OF DEREGULATION. If necessary to protect the public
10 interest, the commission, at any time by order, may revoke its order to suspend the
11 applicability of any provision of law suspended under sub. (5). This subsection does
12 not apply to any provision of law that is considered to be suspended under sub. (5m).

13 4. Page 74, line 20 delete "This act" and substitute "Except as provided in
14 subsection (2x), this act"

END OF INSERT MDIT 2

15 5. Page 74, line 21: after that line insert:

INSERT MDIT 4:

16 The treatment of section 196.195 (5m) and (10) of the statutes first applies
17 to proceedings initiated by petitions filed with the public service commission, or by
18 notices made on the public service commission's own motion, on the effective date of
19 this subsection.

END OF INSERT MDIT 4

(END)

PARTIAL DEREGULATION OF TELECOMMUNICATIONS SERVICES.

C55

SECTION #. Initial applicability; public service commission.

INSERT MDIT 5

LRB-3380/P1

GMM/RJM/mOK:
lgf

DNOTE

Date _____

Senator Stepp:

This preliminary draft includes the portions of your drafting instructions relating to mining financial assurances, electricity generation, telecommunications deregulation, Smart Growth, apprentice-to-journeyman ratios, banking, and credit agreements.

The portions of your drafting instructions relating to rule-making, air pollution, and navigable waters are being prepared as separate preliminary drafts.

When you have reviewed and signed off on each portion of preliminary draft, the entire package will be folded into that is one draft ready for introduction.

GMM

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3380/1dnRM
RJM:.....

~~Senator Stepp:~~

✓

Please review proposed s. 241.023, the section of the LRB analysis entitled "Lawsuits concerning credit agreements," and the nonstatutory provision entitled "Lawsuits concerning credit agreements" closely. I changed the language somewhat to more clearly express my understanding of your intent. I also deleted certain unnecessary language. Let me know if you desire any changes to the provision.

⊕ ✓

You may want to clarify proposed s. 241.023 (3). The legislature must clearly express its intent to change the common law. (See *Le Poidevin v. Wilson*, 111 Wis. 2d 116, 130 (1983). Under the common law, when two parties enter into a written contract and intend the writing to be the final expression of their agreement, the terms of the writing generally may not be varied or contradicted by evidence of any prior written or oral agreement, *except in cases of fraud, duress, or mutual mistake*. Proposed s. 241.023 (3) is silent with regard to fraud, duress, and mutual mistake. As a result, it is not clear whether you intend to apply this evidentiary restriction in cases where the borrower is defrauded or signs the agreement under duress or where the agreement is the result of the parties' mutual mistake. Please let me know if you would like to clarify this provision.

✓

Also, please note that proposed s. 241.023 (4) may not accomplish your intent. Although the legislature may remove a court's jurisdiction to apply promissory estoppel, the court may fashion or extend other equitable relief. See art. I, sec. 9 of the Wisconsin Constitution which provides that there must be a remedy for every wrong and *In Interest of E.C.*, 130 Wis. 2d 376, 388-89 (1986).

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X

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3380/1dn
MDK.....

Sen. Stepp: ←

SP out The instructions regarding partial deregulation of telecommunications services refer to 2 deadlines: 120 and 180 days. I assume that you want a single 120-day deadline. Is that okay?

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3380/P1

RT/MK/MS/GM/RM:kjf/AM

P2

10-24-03

Run NB

DRAFT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 **AN ACT to repeal** 196.491 (3) (g) 1m.; **to renumber** 196.491 (3) (g) 1.; **to amend**
2 66.1001 (2) (e), 66.1001 (4) (a), 106.01 (9), 106.025 (4), 196.195 (10), 196.491 (1)
3 (d), 196.491 (2) (a) 3., 196.491 (2) (a) 3m., 196.491 (2) (g), 196.491 (3) (a) 3. a.,
4 196.491 (3) (e), 221.0901 (3) (a) 1. and 221.0901 (8) (a) and (b); and **to create**
5 66.1001 (4) (e), 106.04, 196.195 (5m), 241.023 and 295.13 (4) of the statutes;
6 **relating to:** administrative rule-making procedures, the control of air
7 pollution, the protection of navigable waters, nonmetallic mining reclamation
8 financial assurances, the regulation of electric generating facilities and
9 high-voltage transmission lines, partial deregulation of telecommunications
10 services, comprehensive planning by local governmental units,
11 apprentice-to-journeyman job-site ratios, the acquisition of in-state banks

1 and in-state bank holding companies, credit agreements, and granting
2 rule-making authority.

Analysis by the Legislative Reference Bureau

Introduction

This bill makes various changes relating to administrative rule-making procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, the regulation of electric generating facilities and transmission lines, the deregulation of telecommunications services, comprehensive planning by local governmental units, apprentice-to-journeyman job-site ratios, the acquisition of in-state banks and in-state bank holding companies, and credit agreements.

Large electric generating facilities and high-voltage transmission lines

Under current law, a person may not begin to construct certain large electric generating facilities or high-voltage transmission lines unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility or line. The process for the PSC to consider an application for a CPCN is subject to various deadlines. One deadline requires the PSC to take final action on an application within 180 days after the application is completed. Under certain circumstances, a court may extend the deadline by an additional 180 days. If the PSC fails to take final action within the deadline, current law provides that the PSC is considered to have issued the CPCN, unless another state is also taking action on the same or a related application. Under this bill, the PSC is considered to have issued the CPCN even if another state is also taking action on the same or a related application.

Also under current law, at least 60 days before a person applies for a CPCN for a large electric transmission facility or high-voltage transmission line, the person must provide an engineering plan regarding the facility or line to the Department of Natural Resources (DNR). Under the bill, this requirement applies only to applications for large electric generating facilities, and not to applications for high-voltage transmission lines.

In addition, current law requires the PSC to prepare a strategic energy assessment every two years that evaluates the adequacy and reliability of the state's electricity supplies. An assessment must describe, among other things, large electric generating facilities and high-voltage transmission lines on which utilities plan to begin construction within three years. The bill requires an assessment to describe large electric generating facilities and high-voltage transmission lines on which utilities plan to begin construction within seven years, rather than three years.

Partial deregulation of telecommunications services

Under current law, a person may petition the PSC to begin proceedings for determining whether to partially deregulate certain telecommunications services. The PSC may also begin such proceedings on its own motion. If the PSC makes

and related documents

certain findings regarding competition for such telecommunications services, the PSC may issue an order suspending specified provisions of law. Current law does not impose any deadlines on such proceedings.

The bill requires the PSC to complete the proceedings no later than 120 days after a person files a petition. In addition, if the PSC begins proceedings based on its own motion, the proceedings must be completed no later than 120 days after the PSC provides notice of its motion. If the PSC fails to complete the proceedings and, if appropriate, issue an order within the deadline, the bill provides for the suspension of any provisions of law that are specified in the petition or in the PSC's motion.

Comprehensive planning by local governmental units

Under the current law popularly known as the "Smart Growth" statute, if a local governmental unit (city, village, town, county, or regional planning commission) creates a comprehensive plan (a zoning development plan or a zoning master plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use.

Beginning on January 1, 2010, under Smart Growth, any program or action of a local governmental unit that affects land use must be consistent with that local governmental unit's comprehensive plan. The actions to which this requirement applies include zoning ordinances, municipal incorporation procedures, annexation procedures, agricultural preservation plans, and impact fee ordinances. Also beginning on January 1, 2010, under Smart Growth, if a local governmental unit engages in any program or action that affects land use, the comprehensive plan must contain at least all of the required planning elements.

Before the plan may take effect, however, a local governmental unit must comply with a number of requirements, such as adopting written procedures that are designed to foster public participation in the preparation of the plan.

Under this bill, before the plan may take effect, a local governmental unit must provide written notice to all owners of property, and leaseholders who have an interest in property pursuant to which the persons may extract nonmetallic mineral resources, in which the allowable use or intensity of use, of the property, is changed by the comprehensive plan, and must create written procedures that describe the methods the local governmental unit will use to distribute elements of a comprehensive plan to owners of, and other persons who have such interests in, such property.

Apprenticeship-to-journeyman job-site ratios

Under current law, the Department of Workforce Development (DWD) may determine reasonable classifications, promulgate rules, issue general or special orders, hold hearing, make findings, and render orders as necessary to oversee the apprenticeship programs provided in this state.

This bill prohibits DWD from prescribing, whether by promulgating a rule, issuing a general or special order, or otherwise, the ratio of apprentices to journeymen that an employer may have at a job site.

*INVEST
ANALYSIS
RM*

Acquisitions of in-state banks and bank holding companies

Current law specifies certain requirements applicable to the acquisition of an in-state bank or in-state bank holding company by an out-of-state bank holding company. This bill applies those requirements to similar acquisitions by out-of-state banks.

Lawsuits concerning credit agreements

With certain exceptions, this bill prohibits a debtor under a credit agreement from bringing a lawsuit against a bank, savings bank, savings and loan association or any affiliate of such an institution (financial institution) based upon the credit agreement unless the credit agreement is in writing, sets forth relevant terms and conditions, and is signed by the financial institution and the debtor. This prohibition does not apply if the credit agreement involves a credit card or other like device or if the total amount financed under the credit agreement is \$25,000 or less and the debtor enters into the agreement for personal, family, or household purposes.

Under current law, when two parties enter into a written credit agreement and intend the writing to be the final expression of their agreement, the terms of the writing generally may not be varied or contradicted by evidence of any prior written or oral agreement, except in cases of fraud, duress, or mutual mistake. Under this bill, in any lawsuit arising out of a written credit agreement, the terms of the writing may not be contradicted by evidence of any prior agreement or of any contemporaneous oral agreement. The bill is silent with regard to fraud, duress, and mutual mistake.

Currently, under the doctrine of promissory estoppel, the existence of an enforceable contract may be implied if a person makes a promise, the promise is one which the person should reasonably expect to induce action or forbearance of a definite and substantial character, the promise induces such action or forbearance, and injustice can be avoided only by enforcement of the promise. This bill provides that the existence of an enforceable credit agreement may not be implied based upon the doctrine of promissory estoppel.

Financial assurance for nonmetallic mining reclamation

Current law requires counties to administer ordinances to ensure that nonmetallic mining sites are reclaimed. "Nonmetallic" mining means extracting substances like gravel and stone. Among other things, nonmetallic mining reclamation ordinances must require operators to provide financial assurance to ensure that the nonmetallic mine will be reclaimed. This bill provides that if a city, village, or town requires an operator to provide financial assurance for nonmetallic mining reclamation, the county must credit the value of that financial assurance toward the amount that the operator is required to provide under the county ordinance.

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

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

1 **SECTION 1.** 66.1001 (2) (e) of the statutes is amended to read:

2 66.1001 (2) (e) *Agricultural, natural and cultural resources element.* A
3 compilation of objectives, policies, goals, maps and programs for the conservation,
4 and promotion of the effective management, of natural resources such as
5 groundwater, forests, productive agricultural areas, environmentally sensitive
6 areas, threatened and endangered species, stream corridors, surface water,
7 floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources
8 consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical
9 and cultural resources, community design, recreational resources and other natural
10 resources.

11 **SECTION 2.** 66.1001 (4) (a) of the statutes is amended to read:

12 66.1001 (4) (a) The governing body of a local governmental unit shall adopt
13 written procedures that are designed to foster public participation, including open
14 discussion, communication programs, information services, and public meetings for
15 which advance notice has been provided, in every stage of the preparation of a
16 comprehensive plan. The written procedures shall provide for wide distribution of
17 proposed, alternative, or amended elements of a comprehensive plan and shall
18 provide an opportunity for written comments on the plan to be submitted by
19 members of the public to the governing body and for the governing body to respond
20 to such written comments. The written procedures shall describe the methods the
21 governing body of a local governmental unit will use to distribute proposed,

1 alternative, or amended elements of a comprehensive plan to owners of property, or
2 to persons who have a leasehold interest in property pursuant to which the persons
3 may extract nonmetallic mineral resources in or on property, in which the allowable
4 use or intensity of use, of the property, is changed by the comprehensive plan.

5 SECTION 3. 66.1001 (4) (e) of the statutes is created to read:

6 66.1001 (4) (e) At least 30 days before the hearing described in par. (d) is held,
7 a local governmental unit shall provide written notice to all owners of property, and
8 all leaseholders who have an interest in property pursuant to which the persons may
9 extract nonmetallic mineral resources, in which the allowable use or intensity of use,
10 of the property, is changed by the comprehensive plan, including all of the following:

11 1. An operator who has obtained, or made application for, a permit that is
12 described under s. 295.12 (3) (d).

13 2. A person who has registered a marketable nonmetallic mineral deposit
14 under s. 295.20.

15 3. Any other person who the local governmental unit knows has a property
16 interest in nonmetallic mineral resources in the jurisdiction.

17 SECTION 4. 106.01 (9) of the statutes is amended to read:

18 106.01 (9) The Subject to s. 106.04, the department may investigate, fix
19 reasonable classifications, issue promulgate rules and, issue general or special
20 orders, and, hold hearings, make findings, and render orders upon its findings as
21 shall be necessary to carry out the intent and purposes of this section. The
22 investigations, classifications, hearings, findings, and orders shall be made as
23 provided in s. 103.005. Except as provided in sub. (8), the penalties specified in s.
24 103.005 (12) apply to violations of this section. Orders issued under this subsection
25 are subject to review under ch. 227.

1 **SECTION 5.** 106.025 (4) of the statutes is amended to read:

2 106.025 (4) In order that the apprentice may qualify at the end of
3 apprenticeship as a skilled mechanic in the art of installing plumbing work, the
4 department, subject to s. 106.04, may prescribe the level of supervision of an
5 apprentice and the character of plumbing work that the apprentice may do during
6 the 3rd year of the apprenticeship term. An apprentice in the 4th or 5th year of the
7 apprenticeship term may install plumbing under the direction or supervision of a
8 master or journeyman plumber without either the master or journeyman being
9 physically present, provided that the master plumber in charge shall be responsible
10 for the work.

11 **SECTION 6.** 106.04 of the statutes is created to read:

12 **106.04 Apprentice-to-journeyman job-site ratio regulation**
13 **prohibited.** The department may not prescribe, whether by promulgating a rule,
14 issuing a general or special order, or otherwise, the ratio of apprentices to
15 journeymen that an employer may have at a job site.

16 **SECTION 7.** 196.195 (5m) of the statutes is created to read:

17 **196.195 (5m) TIME LIMITATION ON COMMISSION ACTION.** (a) No later than 120 days
18 after the filing of a petition under sub. (2) (a), the commission shall complete the
19 proceedings under subs. (2), (3), and (4), and, if appropriate, enter an order under
20 sub. (5). If the commission fails to complete the proceedings and, if appropriate, enter
21 an order before that deadline, the petition is considered to be granted without
22 condition by the commission and any provisions of law under sub. (5) that are
23 specified in the petition are considered to be suspended by the commission.

24 (b) No later than 120 days after the commission provides notice of its own
25 motion under sub. (2) (a), the commission shall complete the proceedings under subs.

1 (2), (3), and (4), and, if appropriate, enter an order under sub. (5). If the commission
2 fails to complete the proceedings and, if appropriate, enter an order before that
3 deadline, the motion is considered to be granted without condition by the commission
4 and any provisions of law under sub. (5) that are specified in the motion are
5 considered to be suspended by the commission.

6 **SECTION 8.** 196.195 (10) of the statutes is amended to read:

7 196.195 (10) REVOCATION OF DEREGULATION. If necessary to protect the public
8 interest, the commission, at any time by order, may revoke its order to suspend the
9 applicability of any provision of law suspended under sub. (5). This subsection does
10 not apply to any provision of law that is considered to be suspended under sub. (5m).

11 **SECTION 9.** 196.491 (1) (d) of the statutes is amended to read:

12 196.491 (1) (d) "Electric utility" means any public utility, as defined in s.
13 196.01, which is involved in the generation, distribution and sale of electric energy,
14 and any corporation, company, individual or association, and any cooperative
15 association, which owns or operates, or plans within the next 3 7 years to construct,
16 own or operate, facilities in the state.

17 **SECTION 10.** 196.491 (2) (a) 3. of the statutes is amended to read:

18 196.491 (2) (a) 3. Identify and describe large electric generating facilities on
19 which an electric utility plans to commence construction within 3 7 years.

20 **SECTION 11.** 196.491 (2) (a) 3m. of the statutes is amended to read:

21 196.491 (2) (a) 3m. Identify and describe high-voltage transmission lines on
22 which an electric utility plans to commence construction within 3 7 years.

23 **SECTION 12.** 196.491 (2) (g) of the statutes is amended to read:

24 196.491 (2) (g) No sooner than 30 and no later than 90 days after copies of the
25 draft are issued under par. (b), the commission shall hold a hearing on the draft

1 which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in
2 an administrative district, established by executive order 22, issued
3 August 24, 1970, which the commission determines will be significantly affected by
4 facilities on which an electric utility plans to commence construction within 3 7
5 years. The commission may thereafter adjourn the hearing to other locations or may
6 conduct the hearing by interactive video conference or other electronic method.
7 Notice of such hearing shall be given by class 1 notice, under ch. 985, published in
8 the official state newspaper and such other regional papers of general circulation as
9 may be designated by the commission. At such hearing the commission shall briefly
10 describe the strategic energy assessment and give all interested persons an
11 opportunity, subject to reasonable limitations on the presentation of repetitious
12 material, to express their views on any aspect of the strategic energy assessment.
13 A record of the hearing shall be made and considered by the commission as comments
14 on the strategic energy assessment under par. (e).

15 **SECTION 13.** 196.491 (3) (a) 3. a. of the statutes is amended to read:

16 196.491 (3) (a) 3. a. At least 60 days before a person files an application for a
17 large electric generating facility under subd. 1., the person shall provide the
18 department with an engineering plan showing the location of the facility, a
19 description of the facility, including the major components of the facility that have
20 a significant air, water or solid waste pollution potential, and a description of the
21 anticipated effects of the facility on air and water quality. Within 30 days after a
22 person provides an engineering plan, the department shall provide the person with
23 a listing of each department permit or approval which, on the basis of the information
24 contained in the engineering plan, appears to be required for the construction or
25 operation of the large electric generating facility.

1 **SECTION 14.** 196.491 (3) (e) of the statutes is amended to read:

2 196.491 (3) (e) If the application does not meet the criteria under par. (d), the
3 commission shall reject the application or approve the application with such
4 modifications as are necessary for an affirmative finding under par. (d). The
5 commission may not issue a certificate of public convenience and necessity for a large
6 electric generating facility until the department has issued all permits and
7 approvals identified in the listing specified in par. (a) 3. a. that are required prior to
8 construction.

9 **SECTION 15.** 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g).

10 **SECTION 16.** 196.491 (3) (g) 1m. of the statutes is repealed.

11 **SECTION 17.** 221.0901 (3) (a) 1. of the statutes is amended to read:

12 221.0901 (3) (a) 1. Merge or consolidate with an in-state bank holding company
13 or in-state bank.

14 **SECTION 18.** 221.0901 (8) (a) and (b) of the statutes are amended to read:

15 221.0901 (8) (a) Except as provided in pars. (b) and (c), the division may not
16 approve an application ~~by an out-of-state bank holding company~~ under sub. (3) (a),
17 other than an application by an in-state bank holding company or in-state bank,
18 unless the in-state bank to be acquired, or all in-state bank subsidiaries of the
19 in-state bank holding company to be acquired, have as of the proposed date of
20 acquisition been in existence and in continuous operation for at least 5 years.

21 (b) The Except as otherwise provided in this paragraph, the division may
22 approve an application under sub. (3) (a) for an acquisition of an in-state bank
23 holding company that owns one or more in-state banks that have been in existence
24 for less than 5 years, if the ~~out-of-state bank holding company applicant~~ divests
25 itself of those in-state banks within 2 years after the date of acquisition of the

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1 in-state bank holding company by the out-of-state bank holding company
2 applicant. This paragraph does not apply if the applicant is an in-state bank holding
3 company or in-state bank.

4 SECTION 19. 241.023 of the statutes is created to read:

5 **241.023 Credit agreements.** (1) DEFINITIONS. (a) "Affiliate" of a bank,
6 savings bank, or savings and loan association means a business entity that controls,
7 is controlled by, or is under common control with the bank, savings bank, or savings
8 and loan association.

9 (b) "Credit agreement" means an agreement between a financial institution
10 and another person, pursuant to which the financial institution grants the person
11 the right to defer payment of debt, incur debt and defer its payment, or purchase
12 goods, services, or interests in land on a time-price basis.

13 (c) "Debtor" means the person who enters into a credit agreement with a
14 financial institution.

15 (d) "Financial institution" means a bank, savings bank, or savings and loan
16 association organized under the laws of this state, another state, or the United States
17 and any affiliate of such a bank, savings bank, or savings and loan.

18 (e) "Open-end credit plan" means an agreement, pursuant to which credit is
19 extended on an account; the financial institution may permit the person to whom
20 credit is extended to obtain goods or services on credit or obtain loans, from time to
21 time, directly from the financial institution or indirectly by use of a credit card or
22 other like device; the person to whom credit is extended may pay the balance in full
23 or in installments; and the financial institution may assess a finance charge from
24 time to time on an outstanding balance.

1 **(2) WRITING REQUIRED; EXCEPTIONS.** (a) Except as provided in par. (b), a debtor
2 may maintain an action that arises out of a credit agreement only if the credit
3 agreement is in writing, sets forth relevant terms and conditions, and is signed by
4 the financial institution and the debtor.

5 (b) Paragraph (a) does not apply to an action that arises out of any of the
6 following:

7 1. A credit agreement that is an open-end credit plan, pursuant to which the
8 debtor may obtain goods or services on credit through the use of a credit card or other
9 like device.

10 2. A credit agreement in which the total amount financed is \$25,000 or less and
11 which the debtor enters into for personal, family, or household purposes.

12 **(3) PAROLE OR EXTRINSIC EVIDENCE RESTRICTED.** In any action authorized under
13 sub. (2) (a), the terms of the credit agreement may not be contradicted by evidence
14 of any prior agreement or of a contemporaneous oral agreement.

15 **(4) PROMISSORY ESTOPPEL INAPPLICABLE.** A promise by a financial institution to
16 grant a person the right to defer payment of debt, incur debt and defer its payment,
17 or purchase goods, services, or interests in land on a time price basis may not be
18 enforced under the doctrine of promissory estoppel.

19 SECTION ~~20~~ 295.13 (4) of the statutes is created to read:

20 295.13 (4) **CREDITING OF FINANCIAL ASSURANCE.** If a nonmetallic mining site is
21 subject to a county ordinance under sub. (1) or (2) and the city, village, or town in
22 which a nonmetallic mining site is located required the operator of the mining site
23 to provide financial assurance for nonmetallic mining reclamation of the nonmetallic
24 mining site, the county shall credit the value of the financial assurance provided to

1 the city, village, or town against the amount of financial assurance that the operator
2 is required to provide under the county ordinance.

3 ~~SECTION 21~~ **Initial applicability.**

AND RELATED DOCUMENTS

4 (1) ~~LAWSUITS CONCERNING CREDIT AGREEMENTS~~ The treatment of section 241.023
5 of the statutes first applies to actions commenced on the effective date of this
6 subsection.

7 (2) The treatment of section 196.195 (5m) and (10) of the statutes first applies
8 to proceedings initiated by petitions filed with the public service commission, or by
9 notices made on the public service commission's own motion, on the effective date of
10 this subsection.

11 (3) **ENGINEERING PLANS.** The treatment of section 196.491 (3) (a) 3. a. of the
12 statutes first applies to engineering plans provided to the department of natural
13 resources on the effective date of this subsection.

14 (4) **CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY INVOLVING OTHER STATES.**
15 The treatment of section 196.491 (3) (g) 1. and 1m. of the statutes first applies to
16 applications filed on the effective date of this subsection.

17 (END)

PARTIAL DEREGULATION OF
TELECOMMUNICATIONS.

C 55
↓

O-Note

INSERT ANALYSIS RM

Lawsuits concerning credit agreements and other credit-related documents

With certain exceptions, this bill prohibits a debtor under debt forbearance agreement or credit agreement from bringing a lawsuit against a bank, savings bank, savings and loan association, or any affiliate of such an institution (financial institution) based upon the agreement unless the agreement is in writing, sets forth relevant terms and conditions, and is signed by the financial institution and the debtor. With certain exceptions, this bill also prohibits an individual who seeks to enter into a debt forbearance agreement or credit agreement from bringing a lawsuit against a financial institution based upon a loan commitment or forbearance commitment issued by the financial institution unless the commitment is in writing, sets forth relevant terms and conditions, and is signed by the financial institution. These prohibitions do not apply if the agreement or commitment is subject to the Wisconsin Consumer Act (which generally regulates credit transactions of \$25,000 or less that are entered into for personal, family, or household purposes).

Under current law, when two parties enter into a written credit agreement or debt forbearance agreement and intend the writing to be the final expression of their agreement, the terms of the writing generally may not be varied or contradicted by evidence of any prior written or oral agreement, except in cases of fraud, duress, or mutual mistake. Under this bill, in any lawsuit arising out of a written credit agreement or loan forbearance agreement, the terms of the writing may not be contradicted by evidence of any prior agreement or of any contemporaneous oral agreement. In addition, in any lawsuit arising out of a written loan commitment or forbearance commitment, the terms of the writing may not be contradicted by evidence of any prior commitment or of any contemporaneous oral commitment. The bill is silent with regard to fraud, duress, and mutual mistake.

Currently, under the doctrine of promissory estoppel, the existence of an enforceable contract may be implied if a person makes a promise, the promise is one which the person should reasonably expect to induce action or forbearance of a definite and substantial character, the promise induces such action or forbearance, and injustice can be avoided only by enforcement of the promise. This bill provides that the existence of an enforceable credit agreement may not be implied based upon the doctrine of promissory estoppel.

INSERT 11-3

related and related documents (B)

SECTION ~~11~~ 241.023 of the statutes is created to read:

241.023 Credit agreements. (1) DEFINITIONS. (a) "Affiliate" of a bank, savings bank, or savings and loan association means a business entity that controls,

is controlled by, or is under common control with the bank, savings bank, or savings and loan association.

(b) "Credit or forbearance agreement" means an agreement between a financial institution and another person, pursuant to which the financial institution grants the person the right to defer payment of debt, incur debt and defer its payment, or purchase goods, services, or interests in land on a time[✓]-price basis. X

(c) "Debtor" means a person who enters into, or seeks to enter into, a credit agreement with a financial institution.

(d) "Financial institution" means a bank, savings bank, or savings and loan association organized under the laws of this state, another state, or the United States and any affiliate of such a bank, savings bank, or savings and loan[✓] association. X

(e) "Loan or forbearance commitment" means a commitment by a financial institution to grant a person the right to defer payment of debt, incur debt and defer its payment, or purchase goods, services, or interests in land on a time[✓]-price basis. X

(2) WRITING REQUIRED; EXCEPTIONS. (a) Except as provided in par. (c)[✓], no debtor may maintain an action arising out of a credit or forbearance agreement unless the credit or forbearance agreement is in writing, sets forth relevant terms and conditions, and is signed by the financial institution and the debtor.

(b) Except as provided in par. (c)[✓], no debtor may maintain an action arising out of a loan or forbearance commitment unless the commitment is in writing, sets forth relevant terms and conditions, and is signed by the financial institution.

(c) Paragraphs (a) and (b) do not apply to a credit or forbearance agreement or a loan or forbearance commitment that is subject to chs. 421[✓] to 427[✓].

LPS: do not
add an "e" to this
word - it exists
- 3 -

(3) PAROL OR EXTRINSIC EVIDENCE RESTRICTED. (a) In any action authorized under sub. (2) (a), the terms of the credit or forbearance agreement may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.

(b) In any action authorized under sub. (2) (b), the terms of the loan or forbearance commitment may not be contradicted by evidence of any prior commitment or of a contemporaneous oral commitment.

(4) PROMISSORY ESTOPPEL INAPPLICABLE. A promise by a financial institution to grant a person the right to defer payment of debt, incur debt and defer its payment, or purchase goods, services, or interests in land on a time-price basis may not be enforced under the doctrine of promissory estoppel.

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

LRB-3380/~~P2dn~~
GMM/RJM/MDK:kjff

P2dn

October 16, 2003

Date

Senator Stepp:

This preliminary draft includes the portions of your drafting instructions relating to mining financial assurances, electricity generation, telecommunications deregulation, Smart Growth, apprentice-to-journeyman ratios, banking, and credit agreements.

The portions of your drafting instructions relating to rule-making, air pollution, and navigable waters are being prepared as separate preliminary drafts.

When you have reviewed and signed off on each preliminary draft, the entire package will be folded into one draft that is ready for introduction.

Gordon M. Malaise
Senior Legislative Attorney
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Please review proposed s. 241.023, the section of the LRB analysis entitled "Lawsuits concerning credit agreements," and the nonstatutory provision entitled "Lawsuits concerning credit agreements" closely. I changed the language somewhat to more clearly express my understanding of your intent. I also deleted certain unnecessary language. Let me know if you desire any changes to the provision.

You may want to clarify proposed s. 241.023(3). The legislature must clearly express its intent to change the common law. *See Le Poidevin v. Wilson*, 111 Wis. 2d 116, 130 (1983). Under the common law, when two parties enter into a written contract and intend the writing to be the final expression of their agreement, the terms of the writing generally may not be varied or contradicted by evidence of any prior written or oral agreement, *except in cases of fraud, duress, or mutual mistake*. Proposed s. 241.023(3) is silent with regard to fraud, duress, and mutual mistake. As a result, it is not clear whether you intend to apply this evidentiary restriction in cases where the borrower is defrauded or signs the agreement under duress or where the agreement is the result of the parties' mutual mistake. Please let me know if you would like to clarify this provision.

Also, please note that proposed s. 241.023 (4) may not accomplish your intent. Although the legislature may remove a court's jurisdiction to apply promissory estoppel, the court may fashion or extend other equitable relief. See art. I, sec. 9, of the Wisconsin Constitution which provides that there must be a remedy for every wrong and *In Interest of E.C.*, 130 Wis. 2d 376, 388-89 (1986).

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The instructions regarding partial deregulation of telecommunications services refer to two deadlines: 120 and 180 days. I assume that you want a single 120-day deadline. Is that okay?

Mark D. Kunkel
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3380/P2dn
GMM&MDK:kjf.pg

October 23, 2003

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