Kunkel, Mark

From: Malaise, Gordon
Sent: Wednesday, October 15, 2003 4:38 PM
To: Tradewell, Becky; Kunkel, Mark; Nelson, Robert P.; Kennedy, Debora; Kreye, Joseph
Subject: FW: Addition to Omnibus Draft--LRB-3380

Attorneys:

Attached are follow-up drafting instructions for Senator Stepp's omnibus regulatory reform draft.

As you will see, the bulk of the follow-up instructions belong to Becky, who may incorporate them in the separate preliminary draft that she is working on.

The last two pages of the follow-up instructions contain various miscellaneous items that will involve the remaining attorneys captioned above as follows:

1. Returning energy conservation dollars to utilities (LRB-3071/4) MDK.
2. Patient privacy. DAK
3. Real estate license reciprocity. MDK
4. UETA (LRB-0176/1) RPN et. al.
5. Sales tax on temporary services. JK

LRB-3380/P1 is currently in editing. When it comes out of editing, these various miscellaneous items can be inserted into a /P2 version of the draft.

If it would make things easier, you may draft your portions as inserts and give them to me. I will then insert them into the draft.

Gordon

-----Original Message-----
From: Manley, Scott
Sent: Wednesday, October 15, 2003 3:14 PM
To: Malaise, Gordon
Subject: Addition to Omnibus Draft

Gordon,

Attached below is the additional information to be incorporated into the omnibus draft. Much of the new language applies to Chapter 185, but there are other miscellaneous provisions that apply to other statutes. Thank you for seeing that this document reaches the drafters responsible for working in these areas.

Scott

LRB Additions (Oct 15, 2003).d...

The following regulatory reform recommendations were not included in the prior two packages submitted to LRB for drafting:

Chapter 285
(Air Program)

1. Amend 285.61 (3)(a)(b) to read:

(a) *Major source construction permits.* For construction permits for major sources, within 60 ~~120~~ days.

(b) *Minor source construction permits.* For construction permits for minor sources, within 15 ~~30~~ days.

2. Amend 285.61 (7) (a) to read:

(a) *Hearing permitted.* The department may hold a public hearing on the construction permit application if requested by a person who may be directly aggrieved by the issuance of the permit, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

Note: This change adds a requirement that persons requesting a hearing be potentially affected by the permit in question. To allow anyone to delay the issuance of the permit is unfair to the applicant, creating unnecessary delays and costs to both the applicant and DNR.

3. Amend 285.62 (1) – (5) in parallel fashion to those changes noted above and in prior drafts, including added 60/15-day deadlines for a preliminary determination under s. 285.62 (3) (a) and 10-day notice deadline under s. 285.62 (3) (a).

4. Amend 285.62 (6) (c) 1. to read:

1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit or otherwise takes measures to satisfy the objection.

Note: This change merely recognizes that changes to the permit are not always required to address EPA concerns; that is a simple clarification by DNR my be sufficient to remove the objection.

5. Amend 285.62 (7) to read:

(7) DEPARTMENT DETERMINATION; ISSUANCE.

(a) The department shall approve or deny the operation permit application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for an existing source or deny the application within 6 ~~18~~ months after receiving a complete application, except that the department may, by rule, extend the 6 ~~18~~-month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule may not extend the 6~~18~~-month period for more than 3 years.

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under ss. 285.63 and 285.64 are met. The department shall issue an operation permit for a new source or modified source or deny the application within 30 ~~180~~ days after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit.

6. Amend 285.62 (8) to read:

(8) OPERATION CONTINUED DURING APPLICATION. If a person timely submits a complete application for a stationary source under sub. (1) ~~and submits any additional information requested by the department within the time set by the department~~, the stationary source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until the department acts under sub. (7). An application is timely if submitted on or before the operation permit application date specified under sub. (11) (b), or for a renewal, on or before the date the operation permit expires.

Note: This provision reconciles concepts contained in other provisions that allow DNR to request additional information at any time during the permitting process, but requires DNR deadlines to be linked to its "completeness determination." This change allows for the continued operation of equipment or processes so long as the owner or operator submitted a complete permit application.

7. Ramifications for not issuing permits within prescribed deadlines.

a. Amend 285.62 (9) to read:

(9) DELAY IN ISSUING PERMITS.

(a) If the department fails to issue an operation permit or to deny the application within the period specified in sub. (7) or in a rule promulgated under sub. (7), that failure is considered a final decision on the application solely for the purpose of obtaining judicial review under ss. 227.52 and 227.53 to require the department to act on the application without additional delay.

(b) Upon an applicant's request, the department shall pay to the applicant from department appropriations for administration and technology at s. 20.370 (8)(ma) $1,000 for each day the department fails to issue an operation permit or to deny the application within the period specified in sub. (7) (b).

(c) ~~(b)~~ Paragraphs (a) and (b) ~~does~~ not apply if the department's failure to act is due to the applicant's failure to submit a complete application ~~and any additional information requested by the department in a timely manner~~.

b. Create 285.61 (10) to read:

(10) DELAY IN ISSUING PERMITS.

(a) Upon an applicant's request, the department shall pay to the applicant from department appropriations for administration and technology at s. 20.370 (8)(ma) $1,000 for each day the department fails to issue a construction permit or to deny the application within the period specified in sub. (8) (b).

(b) Paragraph (a) does not apply if the department's failure to act is due to the applicant's failure to submit a complete application.

Note: Currently, there is little incentive for DNR to act on a permit application within the statutory deadlines. In lieu of presumptive approval of permits, these provisions would require the DNR to pay to applicants what could be considered liquated damages for lost business opportunities upon missing permit issuance deadlines. Such a concept is common

in construction contracts. The money would come from GPR funding for administration and technology (about $15 million for the last biennium), rather than Air Bureau or permitting funds to avoid depleting limited resources for permit reviews (which could be inconsistent with the Clean Air Act) and to avoid having such an assessment come from other applicant's permit fees.

This provision also reconciles concepts contained in other provisions that allow DNR to request additional information at any time during the permitting process, but requires DNR deadlines to be linked to its "completeness determination." This change allows for an applicant to challenge as a denial when DNR misses the prescribed deadlines so long as the application is deemed complete.

8. Delete s. 285.63(2)(d).

Note: This provision prohibits a construction permit for a major source unless DNR finds that "the benefits of the construction or modification of the major source significantly outweigh the environmental and social costs imposed as a result of the major source's location, construction or modification." This punishes companies wishing to locate in economically depressed areas such as Milwaukee, Racine and Kenosha, and encourages greenfields development over brownfields redevelopment.

9. Amend 285.66(3) (a) (Permit Renewal) to read:

(a) A permittee shall apply for renewal of an operation permit at least 3 ~~12~~ months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

Note: The revised deadline is consistent with DNR approval deadlines; that is, DNR does not need 12 months to review a renewal application.

10. Create 285.27(2) (d) to read:

(d) *Federal standards covering similar emissions.* Emission limitations and control requirements promulgated under sub. (b) do not apply to hazardous air contaminants emitted by the emissions units, operations or activities that are regulated by an emission standard promulgated under the federal clean air act. Hazardous air contaminants "regulated by an emission standard promulgated under the federal clean air act means the hazardous air contaminants that are regulated by the federal clean air act by the name of the contaminant, by virtue of regulation of another substance as a surrogate for the contaminant, or by virtue of regulation of a species or category of hazardous air contaminants that includes the contaminant.

Note: This language is included in DNR's proposed changes to its air toxics program (NR 445), except that DNR's exempts only those emissions subject to section 112 of the federal act. (There is no logical reason to prohibit sources regulated under other provisions of the act from getting the same exemption.) The purpose is to avoid duplicative requirements for substances regulated by EPA. This provision is also consistent with MI law that exempts contaminants from state controls if a federal standard "controls similar compounds." (See MI statute s. 324.5508 (2))

11. Duplicative Ambient Air Quality Standards

a. Amend 285.21(4) of the statutes is amended to read:

(4) IMPACT OF CHANGE IN FEDERAL STANDARDS. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are relaxed, the department shall alter the corresponding state standards ~~unless it finds that the relaxed standards would not provide adequate protection for health and public welfare~~.

b. Create 285.xxx to read:

The department may only apply particulate emissions controls to specific geographic areas that currently violate, or previously violated and now meet, an ambient air quality standard adopted under the federal clean air act for particulate matter 10 microns or smaller in size, or for particulate matter 2.5 microns or smaller in size.

Note: In Wisconsin, there are currently three particulate standards that are either in place, or will be in place soon. In 1977, the Environmental Protection Agency (EPA) adopted an air quality standard for total suspended particulates (TSP), which regulates particles at or below 100 microns in size. Subsequently, Wisconsin also adopted the TSP standard. In 1984, however, the EPA repealed the TSP standard, and replaced it with a PM10 standard, which addressed particulate matter at or below 10 microns in size. While Wisconsin adopted the PM10 standard, it also maintained the TSP standard as a state ambient air quality standard.

In 1997, EPA also adopted a fine particulate standard, known as PM 2.5. While the implementation of this standard has been delayed due to litigation and other causes, Wisconsin will be adopted this standard as well. Moreover, DNR has be monitoring PM 2.5 emissions.

Wisconsin has no areas that violate the PM2.5 or PM10 standard. However, there is an area in Milwaukee that is in violation of the TSP. Because of this "state only" nonattainment status, some special requirements apply to the area. For example, if a new source wanted to move into the area, it may have to obtain offsets. Moreover, the areas have the stigma of "nonattainment", which is a clear disincentive to economic growth.

Because federal ambient air standards focus extensively on particulate matter, it is unnecessary to have this additional state only ambient air quality standard. EPA obviously determined that a TSP standard was unnecessary given other particulate matter regulation. Wisconsin should also eliminate this standard so as not to impose unnecessary regulatory burdens that do not apply elsewhere on industry.

This proposal would require DNR to eliminate TSP nonattainment areas. It would also prohibit DNR from continuing to regulate these areas as nonattainment areas unless they violated the PM10 or PM 2.5 standard.

12. Establishing ambient air quality standards.

a. Amend 285.21(1) to read:

(a) Similar to federal standard. If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (4).

~~(b) Standard to protect health or welfare. If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.~~

Note: By their own admission, DNR does not have the resources, nor are they the appropriate venue for establishing ambient air quality standards. For example,

environmental groups recently petitioned DNR to establish an air quality standard for carbon dioxide (climate change gas) under this provision. In a staff memo recommending the Natural Resource Board reject the request (which they did at their September 2003 meeting), DNR notes that it has never used this authority for several reasons, including DNR's lack of technical expertise and resources to undertake the studies necessary to establish an ambient air quality standard under this provision. They argue that EPA is the proper venue for establishing such standards considering EPA's experience and resources, and the need to regulate across the broadest geographic scope. DNR would retains its authority to establish state-only standards for hazardous air emissions.

13. Clarification of Procedures for Establishing Nonattainment Designations.

a. Amend s. 285.01(30) to read:

(30) "Nonattainment area" means a county or combination of counties ~~an area~~ identified by the department in a document prepared under s. 285.23 (2) where the concentration in the atmosphere of an air contaminant in the county exceeds an ambient air quality standard, except that counties not exceeding an ambient air quality standard may be identified as nonattainment if the criteria set forth in s. 285.23 (1) are met.

b. Amend s. 285.23 to read:

285.23 **Identification of nonattainment areas.** (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. Counties that do not exceed an ambient air quality standard shall not be identified as a nonattainment area or part of a nonattainment area unless all of the following apply:

(a) The county is required to be designated nonattainment under the federal clean air act.

(b) Emissions from the county cause one or more Wisconsin counties to exceed an ambient air quality standard.

(c) The joint committee for review of administrative rules approves the department's recommendation to identify the county as nonattainment contained in the documents prepared in sub. (2).

(2) DOCUMENTS. (a) *Development of documents.* The department shall issue documents from time to time which define or list specific nonattainment areas based upon the procedures and criteria promulgated under sub. (1). Notwithstanding ss. 227.01 (13) and 227.10 (1), documents issued under this subsection are not rules.

(b) *Report to legislature.* No later than three months prior to a recommendation by the Governor on nonattainment designations under s. 207(d)(1)(A) of the federal clear air act, the department shall prepare and submit a report to the joint committee for review of administrative rules that contains proposed recommendations for nonattainment areas consistent with sub. (1) with supporting documents developed under sub. (a). The joint committee for review of administrative rules may return the department's recommendations within 30 days of receiving the department's report with a written explanation of why the proposed recommendation is returned. If the department's secretary disagrees with the committee's reasons for returning the proposed recommendation, the department's secretary shall so notify the committee in writing. The department shall not issue documents developed under sub. (a) or otherwise communicate any recommendations to the U.S. environmental protection agency until the department has adequately addressed the issues raised during the committee's review of the proposed recommendations.

Note: A nonattainment designation under the clean air act results in substantial regulatory burdens and related economic development disincentives for any area so designated. Scores of rules imposing costs and development restrictions follow such designations. Yet, there is no opportunity for legislative review the department's recommendations on nonattainment areas. In addition, in the past the department staff has circumvented the requirement that such areas be in violation of the standard by including counties meeting the standard into broad, multi-county areas that merely includes one or more counties that violate the standard. Finally, DNR takes the position that the documents required under these existing provisions are not required to be developed prior to the Governor's recommendation on nonattainment, but instead, after EPA action. To produce such documents at that point is meaningless – the decision in final.

These revisions clarify those circumstances that allow the department to recommend "attainment" counties to be designated nonattainment and provides for limited legislative review of the department's recommendations and underlying documents. They would also assure the relevant documentation is prepared in a timely manner.

14. Clarification of Authorities to Development State Implementation Plans

a. Add 285.80 to read:

285.80 Development of State Implementation Plans.

(1) DEPARTMENT'S AUTHORITIES. The department shall not adopt or submit a state implementation plan under s. 110 of the federal clean air act that includes rules or requirements that are not necessary to obtain U.S. environmental protection agency approval of the plan.

(2) LEGISLATIVE REVIEW AND APPROVAL. No later than three months prior to a submittal of a state implementation plan to the U.S. environmental protection agency, the department shall prepare and submit a report to the joint committee for review of administrative rules that describes the proposed plan and contains all supporting documents the department intends to include with the plan submittal to the U.S. environmental protection agency. The joint committee for review of administrative rules may return the department's proposed plan within 30 days of receiving the department's report with a written explanation of why the proposed plan is returned. If the department's secretary disagrees with the committee's reasons for returning the proposed plan, the department's secretary shall so notify the committee in writing. The department shall not submit the proposed plan to the U.S. environmental protection agency until the department has adequately addressed the issues raised during the committee's review of the proposed plan.

(3) LEGISLATIVE REPORT ON STATE IMPLEMENTATION PLANS. No later than [6 months from date of enactment], the department shall submit a report to the joint committee for review of administrative rules that contains all of the following:

(a) *Description of state implementation plans.* A description all existing and pending state implementation plans developed under s. 110 of the federal clean air act, including an analysis of any rules or requirements that may not have been necessary to obtain U.S. environmental protection agency approval of the plan but that are federally enforceable as a plan component.

(b) *Recommendations of plan revisions.* Recommendations for plan revisions to remove rules and other plan components that may not have been necessary to obtain U.S. environmental protection agency approval of the plan.

Note: Similar to nonattainment designations, state implementation plans (or SIPs) carry substantial regulatory weight and related economic development disincentives for any area

designated nonattainment. Scores of rules imposing costs and development restrictions arise out of such plans, as DNR must include promulgate rules or commitments to develop rules for its SIPs. Once EPA approves the SIP, any commitment to promulgate rules becomes a federally enforceable requirement on the state. Since all aspects of a SIP are federally enforceable, private groups can sue the state or regulated community under the citizen suit provisions of the Clean Air Act for deviations from the SIP.

Despite the importance of DNR SIP submittals, there is no opportunity for legislative review of the department's SIP recommendations for nonattainment areas. In addition, in the past the department has included "state-only" requirements in SIP submittals that have unnecessarily become federally enforceable. These revisions limit the department's authority for include state-only requirements in SIPs and provides for limited legislative review of the department's recommendations and underlying documents.

15. Limitations on Monitoring Requirements

a. Amend 285.17(2) to read

The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months. <u>The department shall not include any monitoring requirements in a permit if the applicant demonstrates the requirement would impose monitoring costs that exceed costs associated with monitoring requirements imposed by states adjacent to Wisconsin on similar sources, or if otherwise not needed to assure compliance with applicable requirements.</u>

Note: One of the most significant costs associated with air quality requirements relate to monitoring requirements. Often, DNR imposes costly monitoring requirements not imposed by other states, which in turn, put Wisconsin businesses at a competitive cost disadvantage. This change would limit DNR's ability to impose monitoring requirements more stringent than required by neighboring states.

Miscellaneous Chapters

1. **Issue: Returning Energy Conservation Dollars to Utilities**

   Background: Utilities currently make contributions to the public benefits fund for use by DOA to run energy conservation programs for businesses and households, low-income energy assistance programs and renewable resources programs. The Department of Administration currently administers the program and allocates resources.

   Proposal: With PSC approval, allow utilities currently contributing money to the public benefits fund to retain some of those dollars if they are used for energy conservation programs for industrial, commercial, and agricultural customers in the utility's area. PSC would set standards in rule for use of such dollars. This proposal would be consistent with LRB 3071/4.

2. **Patient Privacy**

   Background: Health care providers and payers currently are focusing on becoming compliant with some of the most significant and costly federal health care regulations enacted in a generation. The federal Health Insurance Portability and Accountability Act of 1986 (HIPAA) is being implemented through a series of regulations that dramatically change the way health care providers and payers operate.

   In April 2003, the U.S. Department of Health and Human Services (HHS) published the HIPAA Privacy Rule. The Privacy Rule requires providers and payers to modify their procedures and operations to protect the medical privacy of patients. The Privacy Rule also requires health care providers and payers to follow state law in certain circumstances. Wisconsin statutes provide significant protection for patient medical records, but the state's regulatory scheme is outdated and, in many respects, it is not clear whether providers should be following HIPAA or the state statute. This inconsistency between the federal and state law is causing compliance issues for providers and payers and needlessly increasing the administrative burden of the federal law.

   While the state, at some point, should consider significant amendments to the medical record privacy statute to ensure consistency with the federal law, one amendment to the statute would eliminate a major inconsistency between the federal and state laws and assist providers and payers in their efforts to comply with this important law.

   Proposal: The HIPAA Privacy Rule permits providers to release medical records without patient consent for purposes of payment, treatment and operations. The Wisconsin statute permits the release of medical records without patient consent for purposes of payment and treatment, but impractically does not include an exception for health care operations. The Wisconsin statute should be amended as follows:

   1. Amend s. 146.82(2)(a) to read: "It is not a violation of sub. (1) to release patient health care records without informed consent in the following circumstances:"
   2. Amend s. 148.82(2)(a) by adding the following provision: "For purposes of health care operations as permitted by 45 CFR 164."

   ? what is purpose and ? Seems to duplicate 146.82 (2)(a) 1.

   Def. health operations 45 CFR 164.501

3. **Real Estate License Reciprocity**

   The Dept. of Regulation and Licensing has been seeking broader authority to enter into license reciprocity agreements with other states. Earlier informal efforts to obtain negotiated licensing standards comparable to that which Wisconsin offers other state's licensees have failed because the Department does not have specific authority to negotiate formal reciprocity agreements. The impact of this is that Wisconsin real estate brokers currently have a more difficult time when seeking a license from another state than non-Wisconsin licensees seeking a Wisconsin real estate license.

Proposal: Create new s. 452.05 (?) "The department may, after consultation with the real estate board, enter into reciprocal licensing agreements with other real estate licensing jurisdictions."

4. **Issue: Electronic Transactions**

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended it for enactment in all of the states. UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts a version of UETA in Wisconsin, one of only 2 states which have yet to adopt this legal framework.

Proposal: Adopt federal UETA legal framework, as already drafted in LRB–0176/1.

5. **Issue: Sales Tax on Temporary Services**

Under Wisconsin statutes, sales tax is imposed on the privilege of selling, performing or furnishing of specifically listed services at retail in this state. Only the services explicitly listed in the Wisconsin statutes are subject to sales taxes.

Providing temporary employee services to customers and clients are not taxable services under Wisconsin sales and use tax laws. Recently, however, the Wisconsin Department of Revenue (DOR), through their sales tax audit practices has begun to tax businesses on temporary services.

In providing employees to its clients, a temporary service company negotiates terms with its clients including time, place, type of work, skills needed by the temporary employee, place of services and price of the temporary services.

These are temporary employees or staff augmentation arrangements. The client exercises daily control over the temporary employee provided by the company. The client assigns specific tasks, manages and controls the work of the temporary employees.

Disturbingly, DOR has begun interpreting the statutes to conclude that if the final service is subject to the sales tax, now the temporary services activity is subject to the sales tax. [For example, services such as (1) the repair, maintenance, cleaning, and inspection of tangible personal property, (2) landscaping services, or (3) telephone answering services.]

In reality, the company is providing employees for an hourly, weekly or monthly charge. From the client's perspective, the temporary employees are functioning as or stepping into the shoes of its employees. Neither believes that any other services such as repair, maintenance, cleaning, landscaping or telephone answering services are being sold or acquired.

Changes in legal interpretations by the Department of Revenue will hurt Wisconsin's ability to compete as well as cost Wisconsin businesses resources in terms of new litigation and tax increases.

Proposal: Clarify to current law regarding the sales tax on temporary services. In the states where this tax is imposed, the statutes specifically enumerate that temporary or staffing services are subject to the sales tax. Wisconsin law does not specify this.

Kunkel, Mark

From: Malaise, Gordon
Sent: Tuesday, October 21, 2003 10:53
To: Kunkel, Mark
Subject: FW: reform addition

Mark:

Attached is another addition to Sen. Stepp's omnibus draft. It involves ch. 196.

Gordon

-----Original Message-----
From: Manley, Scott
Sent: Tuesday, October 21, 2003 9:17 AM
To: Malaise, Gordon
Cc: Risch, Jay
Subject: FW: reform addition

Hi Gordon,

This is Jay Risch in the Stepp office sitting in on Scott's computer while he is out for a few days. Sorry to throw another last minute addition at you, but here is another.

Thanks -

Jay Risch
Office of Senator Cathy Stepp

-----Original Message-----
From: Jeff Schoepke [mailto:jschoepke@wmc.org]
Sent: Tuesday, October 21, 2003 7:08 AM
To: Manley, Scott
Subject: reform addition

Scott-

I have to do this to you. But, here is something I would like to add to the package.

This was proposed by the Wisconsin Economic Development Association. Initially some of the organizations raised concerns- so it was not forwarded to you for inclusion in the package. However, we told WEDA that if they could answer the questions those parties (Realtors, Paper Council, Builders) had with the initiative, then we would recommend it be added. WEDA has met with those parties, and addressed their concerns. Therefore I recommend you add this.

I know we are getting late- I hear rumors that there could be an LRB draft real soon. But this should be a simple addition.

If you have questions, I'll be here until about 2:00, then out to do a spech in Milwaukee.

Thanks for your patience and help on this.

Jeff Schoepke

Director of Environmental Policy
Wisconsin Manufacturers & Commerce
ph: (608) 258-3400 fax: (608) 258-3413
jschoepke@wmc.org

Issue: Recovery of economic development dollars

Extend to all utilities statutory provisions allowing telecommunications utilities to recover through rates the costs for promotion of economic development.

Background: Wis. Stat. § 196.03(6)(e) allows for the recovery of costs for the promotion of economic development in the state by telecommunications utilities. Historically, in setting rates for gas and electric utilities, the Public Services Commission has not allowed the recovery of economic development costs in utility rates.

Generally, gas and electric utilities in this state are intimately involved in economic development efforts because they provide basic infrastructure for new business and economic growth. Allowing gas and electric utilities the ability to recover reasonable costs for economic development activities will allow the utilities to partner with and assist economic development professionals as well as local county and state government to enhance economic development and growth for the State of Wisconsin.

03-3380 DAK ins

10/20/03 Note to file:

From Laura Heitzer, Wis Hosp. Assoc. (asked by WMC to call me):

① Purp of amdt to 146.22(2)(a)(intro.) is to elim. reqmt to release records in, say, circumstance under s. 146.82(2)(a)20. and to elim. reqmt that request be made before release can be effected (as in providing info. to insurance cos.)

② She thinks that the def. of "health care operations" in 45 CFR 164.501(4) does not overlap with cur. st. law under s. 146.82(2)(a)1.

DAK

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–3380/P2
RT/MK/MS/GM/RM:kjf

DNOTES -- 1. GMM
2. RSM

P3
RMR

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Tues 10/28

contributions by electric and gas utilities to the utility public benefits fund, grants for energy conservation and other programs, reciprocal agreements for real estate licenses,

Regen

AN ACT ***to repeal*** 196.491 (3) (g) 1m.; ***to renumber*** 196.491 (3) (g) 1.; ***to amend*** 66.1001 (2) (e), 66.1001 (4) (a), 106.01 (9), 106.025 (4), 196.195 (10), 196.491 (1) (d), 196.491 (2) (a) 3., 196.491 (2) (a) 3m., 196.491 (2) (g), 196.491 (3) (a) 3. a., 196.491 (3) (e), 221.0901 (3) (a) 1. and 221.0901 (8) (a) and (b); and ***to create*** 66.1001 (4) (e), 106.04, 196.195 (5m), 241.023 and 295.13 (4) of the statutes; **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 high–voltage transmission lines, partial deregulation of telecommunications services, comprehensive planning by local governmental units, apprentice–to–journeyman job–site ratios, the acquisition of in–state banks

the confidentiality of patient health care records,

and in–state bank holding companies, credit agreements, and granting 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 and related documents.

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

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.

Insert Anal -3071/5 MDK

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anal: title

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.

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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.

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.

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 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.

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

Insert 5A RSM
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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.

Insert 5-1

(-3071/5 MDK)

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

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.

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.

SECTION #. 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.

SECTION #. 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.

SECTION 5. 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.

SECTION 6. 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 journeymen that an employer may have at a job site.

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

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

Insert 7-17A (RJM-0176)
Insert 7-17B (DAK)
Insert 7-17C (MDK-3380)

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

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

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

SECTION 9. 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.

SECTION 10. 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.

SECTION 11. 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.

SECTION 12. 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 the official state newspaper and such other regional papers of general circulation as may be designated by the commission. At such hearing the commission shall briefly describe the strategic energy assessment and give all interested persons an opportunity, subject to reasonable limitations on the presentation of repetitious material, to express their views on any aspect of the strategic energy assessment. A record of the hearing shall be made and considered by the commission as comments on the strategic energy assessment under par. (e).

SECTION ~~13~~ 14. 196.491 (3) (a) 3. a. of the statutes is amended to read:

196.491 **(3)** (a) 3. a. At least 60 days before a person files an application for a large electric generating facility under subd. 1., the person shall provide the department with an engineering plan showing the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a description of the anticipated effects of the facility on air and water quality. Within 30 days after a person provides an engineering plan, the department shall provide the person 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 large electric generating facility.

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

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

SECTION ~~15.~~ #. 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g).

SECTION ~~16.~~ #. 196.491 (3) (g) 1m. of the statutes is repealed.

SECTION ~~17.~~ #. 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.

SECTION ~~18.~~ #. 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.

(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.

Insert 11-5 (RJM -0176)

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

241.023 Credit agreements and related documents. (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.

(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.

(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.

(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.

(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.

SECTION ~~20.~~ # 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.

Insert 12-25 A (MDK-3380)
Insert 12-25 B (RSM-0176)
Insert 12-25 C (MDK-3071/1)

SECTION 21. Initial applicability.

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

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

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

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

(END)

Insert 13-14A (RJM-0176)
Insert 13-14B (MDK-3071/5)
Insert 13-14C (JK)

D-Note

2003 BILL

AN ACT *to repeal* 137.04, 137.06 and 224.30 (2); *to renumber and amend* 137.05 (title) and 137.05; *to amend* chapter 137 (title), subchapter I (title) of chapter 137 [precedes 137.01], 137.01 (3) (a), 137.01 (4) (a), 137.01 (4) (b), subchapter II (title) of chapter 137 [precedes 137.04], 889.29 (1), 910.01 (1), 910.02 and 910.03; and *to create* 137.11 to 137.24 and 137.25 (2) of the statutes; **relating to:** electronic notarization and acknowledgement, electronic transactions and records, and granting rule–making authority.

Analysis by the Legislative Reference Bureau

In 1999, the National Conference of Commissioners on Uniform State Laws approved the Uniform Electronic Transactions Act (UETA) and recommended it for enactment in all of the states. Generally, UETA establishes a legal framework that facilitates and validates certain electronic transactions. This bill enacts a version of UETA in Wisconsin, with certain changes.

Current law regarding electronic documents, transactions, and signatures

Currently, a combination of state and federal laws govern the use of electronic records, transactions, and signatures in this state. The most significant federal law in this regard is the Electronic Signatures in Global and National Commerce Act, commonly known as "E–sign," which was enacted after UETA was recommended for enactment in all of the states. With certain exceptions relating to existing or pending

document retention requirements, E–sign took effect on October 1, 2000. Although much of E–sign represents new law in this state, some of the issues addressed in E–sign were addressed under state law previous to E–sign. With certain exceptions, E–sign preempts the state law to the extent that the treatment is inconsistent with the treatment under E–sign.

1. PUBLIC RECORDS

Under E–sign, any law that requires retention of a contract or document relating to a transaction in or affecting interstate or foreign commerce may be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Thus, under E–sign, a custodian of a public record relating to a covered transaction is likely permitted to destroy the original record if a proper electronic copy is retained. This authority is consistent with current provisions in state law that, in most cases, permit electronic retention of public records; however, the state law in certain cases imposes additional quality control and evidentiary preservation requirements that must be followed if a public record is to be retained electronically. It is unclear whether these additional requirements continue to apply or would be preempted as inconsistent with these provisions of E–sign.

2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS

Current law relating to the acceptance of electronic documents by governmental units in this state is ambiguous. Under current state 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 in an electronic format, as long as the governmental unit consents. Current state law does not require any governmental unit to accept documents in an electronic format, but provides that an electronic signature may be substituted for a manual signature if certain requirements are met.

E–sign, however, may require any governmental unit that is a "governmental agency" under E–sign (an undefined term) to accept certain electronic documents that relate to transactions in or affecting interstate or foreign commerce. E–sign states that it does not require any person to agree to use or accept electronic documents or electronic signatures, other than a governmental agency with respect to any document that is not a contract to which it is a party. Although no provision of E–sign specifically requires a governmental agency to use or accept electronic documents or signatures, under E–sign, a document relating to a covered transaction may not be denied legal effect solely because it is in electronic form. Thus, E–sign implies that a governmental agency may be required under E–sign to accept an electronic document relating to a covered transaction, as long as the document is not a contract to which the governmental agency is a party. This implication conflicts with another provision of E–sign, which states that E–sign generally does not limit or supersede any requirement imposed by a state regulatory agency (an undefined term) that documents be filed in accordance with specified standards or formats.

3. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE

Promissory notes

Currently, this state's version of the Uniform Commercial Code contains the primary legal framework allowing for transactions in this state involving promissory notes (commonly, loan documents). Title II of E–sign contains the primary legal framework relating to a new type of promissory note, termed a "transferrable record," which allows for the marketing of electronic versions of promissory notes in transactions secured by real property.

Other documents and records

The primary electronic commerce provisions of E–sign are contained in Title I, which establishes a legal framework relating to electronic transactions in or affecting interstate or foreign commerce. Generally, Title I contains provisions that relate to the use of "electronic records" and signatures in covered transactions, the retention of "electronic records" of covered transactions, and the notarization and acknowledgement of covered electronic transactions. Title I broadly defines the term "electronic record" to include, among other things, any information that is stored by means of electrical or digital technology and that is retrievable in perceivable form. This definition likely covers such things as information stored on a computer disk or a voice mail recording. Because of this broad definition, in this analysis of E–sign, the term "document" is generally used in place of the term record. Title I also defines "transaction" broadly to mean any action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including governmental agencies.

Currently, under Title I, a signature, contract, or other document relating to a covered transaction may not be denied legal effect, validity, or enforceability solely because it is in an electronic form, as long as the electronic contract or record, if it is otherwise required to be in writing, is capable of being retained and accurately reproduced by the relevant parties. Similarly, a contract relating to a covered transaction may not be denied legal effect solely because an electronic signature or electronic document was used in its formation.

Title I also permits electronic notarization, acknowledgement, or verification of a signature or document relating to a covered transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law. In addition, Title I provides that no person is required under Title I to agree to use or accept electronic records or signatures.

However, under Title I, any law that requires retention of a contract or document relating to a covered transaction may be satisfied by retaining an electronic document, as long as the retained information satisfies certain requirements relating to accuracy and accessibility. Title I contains similar provisions with regard to laws requiring retention of a check. An electronic contract or document retained in compliance with these provisions generally has the same legal status as an original document. As discussed above with regard to public records custodians, this provision of Title I also likely permits any *private* custodian

of records relating to covered transactions to destroy original records if a proper electronic copy is retained.

Consumer protections

Under Title I, with regard to consumer transactions in or affecting interstate or foreign commerce, existing laws requiring written disclosure currently may be satisfied electronically only if the consumer consents after being informed of certain rights and of the technical requirements necessary to access and retain the electronic document. In addition, the consumer must consent or confirm his or her consent electronically in a manner that reasonably demonstrates that the consumer can access the information that is required to be provided to the consumer. The legal effect of a contract, though, may not be denied solely because of a failure to obtain the consumer's electronic consent consistent with this requirement. Title I also specifies that the use of electronic documents permitted under these consumer provisions does not include the use of an oral communication, such as a voice mail recording, unless that use is permitted under other applicable law.

Any federal regulatory agency, with respect to a matter within the agency's jurisdiction, may exempt a specified category or type of document from the general consumer consent requirement, if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

Exemptions

All of the following are exempt from coverage under the primary electronic commerce provisions of E–sign and, as a result, currently may not be provided in electronic format unless otherwise authorized by law:

1. A document to the extent that it is governed by a law covering the creation and execution of wills, codicils, or testamentary trusts.

2. A document to the extent that it is governed by a law covering adoption, divorce, or other matters of family law.

3. A document to the extent that it is governed by certain sections of the Uniform Commercial code.

4. Court orders or notices and official court documents, including briefs, pleadings, and other writings.

5. Notices of cancellation or termination of utility services, including water, heat, and power.

6. Notices of default, acceleration, repossession, foreclosure, or eviction or the right to cure under a credit agreement secured by, or a rental agreement for, a primary residence of an individual.

7. Notices of the cancellation or termination of health insurance or life insurance, other than annuities.

8. Product recall notices.

9. Documents required to accompany the transportation of hazardous materials.

A federal regulatory agency may remove any of these exemptions, as the particular exemption applies to a matter within the agency's jurisdiction, if the agency finds that the exemption is no longer necessary for the protection of

consumers and that the elimination of the exemption will not increase the material risk of harm to consumers.

Limits on the scope of Title I

In addition to these specific exemptions, Title I has a limited effect upon certain specified laws. For example, Title I states that it does not affect any requirement imposed by state law relating to a person's rights or obligations other than the requirement that contracts or other documents be in nonelectronic form. However, this provision may conflict with other provisions of Title I which appear to specifically affect obligations other than writing or signature requirements. Title I also has a limited effect on any state law enacted before E–sign that expressly requires verification or acknowledgement of receipt of a document. Under Title I, this type of document may be provided electronically only if the method used also provides verification or acknowledgement of receipt. In addition, Title I does not affect any law that requires a warning, notice, disclosure, or other document to be posted, displayed, or publicly affixed within a specified proximity.

State authority under Title I

Title I provides that a state regulatory agency that is responsible for rule making under any statute may interpret the primary electronic commerce provisions of Title I with respect to that statute, if the agency is authorized by law to do so. Rules, orders, or guidance produced by an agency under this authority must meet specific requirements relating to consistency with existing provisions of Title I; to regulatory burden; to justification for the rule, order, or guidance; and to neutrality with regard to the type of technology needed to satisfy the rule, order, or guidance. A state agency may also mandate specific performance standards with regard to document retention, in order to assure accuracy, integrity, and accessibility of retained electronic documents. However, under state law, the rule–making authority of a state agency is limited to interpretation and application of state law and no state agency may promulgate a rule that conflicts with state law.

Relationship between E-sign and UETA

E–sign generally preempts state law unless the state law qualifies for one of two exceptions to preemption. The first exception to preemption permits a state to supersede the effect of the primary electronic commerce provisions of Title I by enacting a law that constitutes an enactment of UETA as approved and recommended for enactment in all of the states. The second exception to preemption permits a state to supersede the effect of the primary electronic commerce provisions of Title I by enacting a law that specifies alternative procedures or requirements for the use or acceptance of electronic records or signatures to establish the legal effect of contracts or other records. Among other things, the alternative procedures or requirements generally must be consistent with E–sign. It is difficult to predict how a court would apply this second exception to preemption. As a result, it is difficult to predict whether and to what extent any state law that does not constitute an enactment of UETA would qualify for this second exception from preemption.

Because this bill makes certain substantive changes to UETA and in some cases it is not clear whether the text is consistent with the intent of the version of UETA recommended for enactment in all of the states, it is difficult to determine whether

the bill qualifies for an exception from preemption and, if enacted, the extent to which the bill would likely supplant the primary electronic commerce provisions of E–sign in this state.

UETA

The following analysis of the version of UETA contained in this bill generally reflects an interpretation that is consistent with the prefatory note and official comments accompanying UETA, which generally discuss the intent of each recommended provision of UETA. For the provisions that are subject to varying interpretations, this analysis discusses each primary interpretation and indicates which interpretation, if any, is supported by the prefatory note or comments. Although the prefatory note and comments have no legal effect, in the past courts have often relied on the prefatory notes and comments to other uniform laws when interpreting ambiguous provisions of those laws. In some instances, the interpretation supported by the prefatory note or comments is difficult to derive from the text of the bill.

1. PUBLIC RECORDS

Although the version of UETA recommended for enactment in all of the states contains a provision potentially affecting the maintenance of public records that is similar to the provision currently in effect under E–sign, this bill provides that public records retention requirements currently in effect in this state continue to apply. The bill also permits the public records board to promulgate rules prescribing additional records retention standards consistent with the bill's provisions. Thus, under this bill, the maintenance of public records is likely governed by current law, as affected by E–sign.

2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS

The same ambiguities regarding the acceptance of electronic documents by governmental units exist under this bill as exist currently under E–sign, although under this bill it is more likely that a governmental unit is not required to accept electronic documents. This bill attempts, in a manner consistent with UETA, to restore the law as it existed in this state before E–sign regarding the acceptance of electronic documents by governmental units. Thus, under this bill, 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 in an electronic format if the governmental unit consents. Although this bill, like current law under E–sign, also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is more likely under this bill that this provision has no effect on the authority of a governmental unit to refuse to accept an electronic document. Unlike current law under E–sign, this bill does not contain any statement that a governmental unit is required to accept an electronic document.

With certain exceptions, this bill grants the Department of Electronic Government (DEG) primary rule–making authority with regard to the use of electronic documents and signatures by governmental units and grants DEG and the secretary of state joint rule–making authority with regard to electronic notarizations. In addition, this bill requires DEG's rules to include standards regarding the receipt of electronic documents and the acceptance or electronic

signatures by governmental units, in order to promote consistency and interoperability with similar standards adopted by other governmental units, the federal government, and other persons interacting with governmental units of this state.

1. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE

Rule of construction

This bill specifies that it must be construed and applied to facilitate electronic transactions consistent with other applicable law, to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices, and to bring about uniformity in the law of electronic transactions.

Applicability and definitions

Generally, the bill applies to the use of electronic records and electronic signatures relating to transactions. Like current law under E–sign, this bill broadly defines the term "electronic record" to include, among other things, any information that is stored by means of electrical or digital technology and that is retrievable in a perceivable form. This definition would likely cover such things as information stored on a computer disk or a voice mail recording. Because of this broad definition, in this analysis of the version of UETA contained in this bill, the term "document" is generally used in place of the term "record." Under the bill, an "electronic signature" includes, among other things, a sound, symbol, or process that relates to electrical technology, that is attached to or logically associated with a document, and that is executed or adopted by a person with intent to sign the document.

The bill defines "transaction" to mean an action or set of actions between two or more persons relating to the conduct of business, commercial, or governmental affairs. Although this definition may be interpreted broadly to include a typical interaction with the government like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers the actions of the government as a market participant. In addition, although the definition does not expressly cover consumer–to–consumer or consumer–to–business transactions, it is possible to interpret this definition, consistent with the official comments, to cover these transactions.

This bill contains all of the exemptions currently in effect under E–sign, with certain modifications. Thus, among other things, this bill does not apply to a transaction governed by a law relating to the execution of wills or the creation of testamentary trusts, to a transaction governed by any chapter of this state's version of the Uniform Commercial Code (UCC) other than the chapter dealing with sales of goods, to a certain utility cancellation notices, to certain court documents, or to product recall notices. Unlike current law under E–sign, the bill also specifically exempts cancellation notices for local telecommunications services. With the exception of the provisions relating to wills, trusts, and the UCC, these exceptions are not included in the version of UETA recommended for enactment in all of the states.

Agreements to use electronic documents and electronic signatures

This bill does not require the use of electronic documents or electronic signatures. Rather, the bill applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Under the bill, this agreement is determined from the context, the surrounding circumstances, and the parties' conduct. A party that agrees to conduct one transaction by electronic means may refuse to conduct other transactions by electronic means. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is likely that, consistent with the comments, these provisions permit a person to deny the legal effect of an electronic document relating to a transaction if a party to the transaction never agreed to conduct the transaction electronically. With certain exceptions, the parties to any transaction may agree to vary the effect of this bill as it relates to that transaction.

Consumer protections

Unlike current law under E–sign, this bill does not contain any protections that specifically apply only to consumers. The consumer protections currently in effect under E–sign would arguably have no effect in this state upon the enactment of this bill.

Legal effect of electronic documents and electronic signatures

As noted earlier, this bill specifies that a document or signature may not be denied legal effect or enforceability solely because it is in electronic form. The bill also specifies that a contract may not be denied legal effect or enforceability solely because an electronic document was used in its formation. These provisions are similar to provisions in current law under E–sign. Unlike E–sign, this bill further states that an electronic document satisfies any law requiring a record to be in writing and that an electronic signature satisfies any law requiring a signature.

Effect of laws relating to the provision of information

Under this bill, if the parties to a transaction have agreed to conduct the transaction electronically and if a law requires a person to provide, send, or deliver information in writing to another person, a party may, with certain exceptions, satisfy the requirement with respect to that transaction by providing, sending, or delivering the information in an electronic document that is capable of retention by the recipient at the time of receipt. Although the bill also states that a document relating to a transaction may not be denied legal effect solely because it is in electronic form, it is likely that, consistent with the comments, the bill permits a person to deny the legal effect of an electronic document relating to a transaction if the electronic document is provided, sent, or delivered in violation of this provision. The bill further provides that an electronic document is not enforceable against the recipient of the document if the sender inhibits the ability of the recipient to store or print the document.

The bill also specifies that, with certain exceptions, a document must satisfy any law requiring the document to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner. There are three possible interpretations of this

provision. First, the provision may prohibit the use of an electronic document if a law requires the document to be posted, displayed, sent, communicated, transmitted, or formatted on paper. Second, the provision may instead require a paper document to be used in addition to an electronic document in these circumstances. Third, consistent with the comments, the provision may require the parties to a transaction to comply with any legal requirement relating to the provision of information *other than a requirement that the information be provided on paper.*

Attribution of electronic documents

Under this bill, an electronic document or electronic signature is attributable to a person whose act created the document or signature. The act of a person may be shown in any manner, including through the use of a security procedure that determines the person to whom an electronic document or electronic signature is attributable.

Effect of change or error

This bill contains three provisions that determine the effect of a change or error in an electronic document that occurs in a transmission between the parties to a transaction. First, if the parties have agreed to use a security procedure to detect changes or errors and if one of the parties fails to use a security procedure and an error or change occurs that the nonconforming party would have detected had the party used the security procedure, the other party may avoid the effect of the changed or erroneous electronic document. Second, in an automated transaction involving an individual, the individual may avoid the effect of an electronic document that results from an error made by the individual in dealing with the automated agent of another person, if the automated agent did not provide an opportunity for prevention or correction of the error. However, an individual may avoid the effect of the electronic document only if the individual, at the time he or she learns of the error, has received no benefit from the thing of value received from the other party under the transaction and only if the individual satisfies certain requirements relating to notification of the other party and return or destruction of the thing of value received. Third, if neither of these provisions applies to the transaction, the change or error has the effect provided by other law, including the law of mistake, and by any applicable contract between the parties.

Electronic notarization and acknowledgement

Like current law under E–sign, this bill permits electronic notarization, acknowledgement, or verification of a signature or document relating to a transaction, as long as the electronic signature of the person performing the notarization, acknowledgement, or verification is accompanied by all other information required by law. Unlike current law under E–sign and the version of UETA recommended for enactment in all of the states, an electronic notarization under this bill must also comply with rules promulgated by DEG and the secretary of state.

Retention of electronic documents

Under this bill, any law that requires retention of a document may, with certain exceptions, be satisfied by retaining an electronic document, as long as the retained

information satisfies certain requirements relating to accuracy and accessibility. The bill contains similar provisions with regard to laws requiring retention of a check, although the term "check" is not defined under the bill and, as a result, may not include a share draft or money order. These provisions are similar to current law under E–sign. However, unlike E–sign and the version of UETA recommended for enactment in all of the states, this bill preserves the treatment of public records under current law, as affected by E–sign (see page 2. of this analysis for a discussion of E–sign's effect upon public records). In addition, unlike E–sign, this bill specifies that an electronic document that is required to be retained must accurately reflect the information set forth in the document *after it was first generated in its final form as an electronic document or otherwise.* The comments indicate that this provision is intended to ensure that the content of a document is retained when documents are converted or reformatted to allow for ongoing electronic retention.

The bill provides that an electronic document retained in compliance with these provisions need not contain any information the sole purpose of which is to enable the document to be sent, communicated, or received. Under current law, this ancillary information is normally required to be retained along with the document to which it is attached. In addition, as under E–sign, an electronic contract or document retained in compliance with these provisions generally has the same legal status as an original document. Like E–sign, this bill also provides that a person may comply with these electronic document retention provisions using the services of another person.

The bill provides that it does not apply to any new laws enacted by this state, after enactment of this bill, that prohibit a person from using an electronic document to satisfy any requirement that the person retain a document for evidentiary, audit, or like purposes. It is unclear, though, what types of retention requirements are enacted for "evidentiary, audit, or like purposes." It is also unclear how this provision relates to other provisions of the bill which provide that an electronic document satisfies any retention requirement as long as specified requirements relating to accuracy and accessibility are also satisfied.

In addition, the bill specifies that it does not preclude a governmental unit of this state from specifying additional requirements for the retention of any document of another governmental unit subject to its jurisdiction. It is unclear how this provision relates to other provisions of the bill which provide that an electronic document satisfies any retention requirement as long as specified requirements relating to accuracy and accessibility are also satisfied. It is also unclear whether this provision grants rule–making authority or merely references any authority that may exist currently. This provision is narrower than a corresponding provision included in the version of UETA recommended for enactment in all of the states in that the corresponding provision is not specifically limited in its application to documents of governmental units.

Evidence

Under this bill, a document or signature may not be excluded as evidence solely because it is in electronic form. This provision confirms the treatment of electronic documents and signatures under current law.

Automated transactions

This bill validates contracts formed in automated transactions by the interaction of automated agents of the parties or by the interaction of one party's automated agent and an individual. Under current law, it is possible to argue that an automated transaction may not result in an enforceable contract because, at the time of the transaction, either or both of the parties lack an expression of human intent to form the contract.

Time and location of electronic sending and receipt

Under this bill, an electronic document is sent when the electronic document a) is addressed or otherwise properly directed to an information processing system that the intended recipient has designated or uses for the purpose of receiving electronic documents or information of the type sent and from which the recipient is able to retrieve the electronic document; b) is in a form capable of being processed by that information processing system; and c) enters an information processing system outside of the control of the sender or enters a region of the information processing system used or designated by the recipient that is under the recipient's control. An electronic document is received when the electronic document enters and is in a form capable of being processed by an information processing system that the recipient has designated or uses for the purpose of receiving electronic documents or information of the type sent and from which the recipient is able to retrieve the electronic document. The bill permits the parties to a transaction to agree to alter the effect of these provisions with respect to the transaction. Under the bill, an electronic document may be received even if no individual is aware of its receipt. Furthermore, under the bill, an electronic acknowledgment of receipt from the information processing system used or designated by the recipient establishes that the electronic document was received but does not establish that the information sent is the same as the information received.

These provisions may be interpreted to alter laws under which the date of receipt of a public record submitted for filing is the date on which a paper copy is received or postmarked, so that the date of electronic filing constitutes the date of receipt instead. However, as noted earlier, this bill specifically states that it applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Although the definition of "transaction" may be interpreted broadly to include a typical governmental action like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers only the actions of the government as a market participant. If the narrower interpretation applies, then these provisions will likely have no effect upon the filing of most public records.

Under this bill, an electronic document is deemed to be sent from the sender's place of business that has the closest relationship to the underlying transaction and to be received at the recipient's place of business that has the closest relationship to the underlying transaction. If the sender or recipient does not have a place of business, the electronic document is deemed to be sent or received from the sender's or recipient's residence. The bill also permits a sender to expressly provide in an electronic document that the document is deemed to be sent from a different location.

The bill also permits the parties to a transaction to agree to alter the effect of these provisions on the transaction. To the extent that an electronic document may constitute a sale, with the seller receiving payment electronically, these provisions may be interpreted to permit a seller to argue that a sale occurred in a jurisdiction where the seller is not subject to a tax that would otherwise be imposed under Wisconsin law. However, the official comments imply that this interpretation is not intended.

In addition, under the bill, if a person is aware that an electronic document purportedly sent or purportedly received in compliance with these provisions was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Although the official comments are silent on the meaning of this provision, it is likely intended to give a court direction as to what law to apply to determine the legal effect when there is a *failure* to send or receive an electronic document in the manner provided under the bill.

Transferable records

This bill expands current law with regard to transactions involving the use of transferable records (electronic versions of certain documents under the Uniform Commercial Code). Although current law under E–sign only permits the use of transferrable records in transactions secured by real property, this bill permits the use of transferable records in any transaction in which a promissory note or document of title under the Uniform Commercial Code may be used. Under this bill, an electronic document qualifies as a transferable record only if the issuer of the electronic document expressly agrees that the electronic document is a transferable record.

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

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

SECTION 1. Chapter 137 (title) of the statutes is amended to read:

CHAPTER 137

AUTHENTICATIONS AND ELECTRONIC

TRANSACTIONS AND RECORDS

SECTION 2. Subchapter I (title) of chapter 137 [precedes 137.01] of the statutes is amended to read:

CHAPTER 137

SUBCHAPTER I

NOTARIES AND COMMISSIONERS OF DEEDS; ELECTRONIC AND NONELECTRONIC NOTARIZATION AND ACKNOWLEDGEMENT

SECTION 3. 137.01 (3) (a) of the statutes is amended to read:

137.01 **(3)** (a) ~~Every~~ Except as authorized in sub. (4) (a) and s. 137.19, every notary public shall provide an engraved official seal which makes a distinct and legible impression or official rubber stamp which makes a distinct and legible imprint on paper. The impression of the seal or the imprint of the rubber stamp shall state only the following: "Notary Public," "State of Wisconsin" and the name of the notary. But any notarial seal in use on August 1, 1959, shall be considered in compliance.

SECTION 4. 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)~~ 137.11 (8). The department of electronic government and the secretary of state shall jointly promulgate rules prescribing a method for attaching or associating an electronic signature and other required information with a signature or record under s. 137.19. The department of electronic government and the secretary of state shall jointly promulgate rules establishing requirements that a notary public must satisfy in order to use an electronic signature for any attestation other than an attestation under s. 137.19. All joint rules promulgated under this paragraph shall be numbered as rules of each agency in the Wisconsin Administrative Code.

SECTION 5. 137.01 (4) (b) of the statutes is amended to read: