require a utility to demonstrate that, no later than a reasonable period of time, as determined by the commission, after the utility implements a program, the economic value of the benefits resulting from the program will be equal to the portion that the utility is allowed to retain under this paragraph.

SECTION 32. 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 33. 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 34. 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 35. 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 36. 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 37. 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 38. 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g).

SECTION 39. 196.491 (3) (g) 1m. of the statutes is repealed.

SECTION 40. 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 41. 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.

SECTION 42. 224.30 (2) of the statutes is repealed.

SECTION 43. ~~241.023~~ of the statutes is created to read: 241.02 (3) 3

241.02 (3) B

241.02 ~~Credit agreements and related documents.~~ (1) ~~DEFINITIONS.~~ (a) In this subsection:

1. "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.

2. (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.

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(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 44. 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.

SECTION 45. 452.05 (3) of the statutes is created to read:

452.05 **(3)** The department may, after consultation with the board, enter into reciprocal agreements with officials of other states or territories of the United States for licensing brokers and salespersons and grant licenses to applicants who are licensed as brokers or salespersons in those states or territories according to the terms of the reciprocal agreements.

SECTION 46. 452.09 (2) (a) of the statutes is amended to read:

452.09 **(2)** (a) ~~Each~~ Except as provided in a reciprocal agreement under s. 452.05 (3), each applicant for a salesperson's license shall submit to the department evidence satisfactory to the department of successful completion of educational programs approved for this purpose under s. 452.05 (1) (c). The department may waive the requirement under this paragraph upon proof that the applicant has received 10 academic credits in real estate or real estate related law courses from an accredited institution of higher education.

SECTION 47. 452.09 (2) (c) (intro.) of the statutes is amended to read:

452.09 **(2)** (c) (intro.) Except as provided in par. (d) or a reciprocal agreement under s. 452.05 (3), each applicant for a broker's license shall do all of the following:

SECTION 48. 452.09 (3) (d) of the statutes is amended to read:

452.09 **(3)** (d) ~~The~~ Except as provided in a reciprocal agreement under s. 452.05 (3), the department may not grant a broker's license to an applicant who does not hold a salesperson's license unless the applicant passes the salesperson's examination and the broker's examination.

SECTION 49. 889.29 (1) of the statutes is amended to read:

889.29 **(1)** If any business, institution or member of a profession or calling in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, or to be recorded on an optical disk or in electronic format, the original may be destroyed in the regular course of business, unless its preservation is required by law. Such

reproduction or optical disk record, when reduced to comprehensible format and when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction of a record or an enlarged copy of a record generated from an original record stored in optical disk or electronic format is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. This subsection does not apply to records governed by s. 137.20.

SECTION 50. 910.01 (1) of the statutes is amended to read:

910.01 **(1)** WRITINGS AND RECORDINGS. "Writings" and "recordings" consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation or recording.

SECTION 51. 910.02 of the statutes is amended to read:

910.02 Requirement of original. To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in chs. 901 to 911, in s. 137.21, or by other statute.

SECTION 52. 910.03 of the statutes is amended to read:

910.03 Admissibility of duplicates. A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. This section does not apply to records of transactions governed by s. 137.21.

SECTION 53. Nonstatutory provisions.

(1) USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES BY GOVERNMENTAL UNITS; EMERGENCY RULES. Using the procedure under section 227.24 of the statutes, the department of electronic government may promulgate emergency rules under section 137.25 (2) of the statutes, as created by this act, for the period before the effective date of permanent rules initially promulgated under section 137.25 (2) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(2) USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC; EMERGENCY RULES. Using the procedure under section 227.24 of the statutes, the secretary of state and the department of electronic government may promulgate emergency rules under section 137.01 (4) (a) of the statutes, as affected by this act, for the period before the effective date of permanent rules initially promulgated under section 137.01 (4) (a) of the statutes, as affected by this act. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the secretary of state and the department are not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and are not required to provide a finding of emergency for a rule promulgated under this subsection.

(3) USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC; PERMANENT RULES. The secretary of state and department of electronic government shall initially

promulgate permanent rules under section 137.01 (4) (a) of the statutes, as affected by this act, to become effective no later than January 1, 2004.

(4) ENERGY CONSERVATION AND EFFICIENCY GRANTS; EMERGENCY RULES. Using the procedure under section 227.24 of the statutes, the public service commission shall promulgate as emergency rules the rules required under section 16.957 (2m) of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the emergency rules promulgated under this subsection may remain in effect until the date on which the permanent rules required under section 16.957 (2m) of the statutes, as created by this act, take effect. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.

SECTION 54. Initial applicability.

(1) LAWSUITS CONCERNING CREDIT AGREEMENTS AND RELATED DOCUMENTS. The treatment of section ~~241.02~~ 241.02 (3) 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.

(5) ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES. The treatment of sections 137.01 (3) (a) and (4) (a) and (b), 137.04, 137.05 (title), 137.06, 137.11 to 137.24, 137.25 (2), 224.30 (2), 889.29 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title) and II (title) of chapter 137, and chapter 137 (title) of the statutes and the renumbering and amendment of section 137.05 of the statutes first apply to electronic records or electronic signatures that are created, generated, sent, communicated, received, or initially stored on the effective date of this subsection.

(6) ENERGY CONSERVATION AND EFFICIENCY GRANTS. The treatment of section 16.957 (2) (b) 1. (intro.) of the statutes first applies to grants that are awarded on the effective date of the rules promulgated under SECTION 53 (4) of this act.

SECTION 55. Effective date.

(1) ENERGY CONSERVATION AND EFFICIENCY GRANTS. The treatment of sections 16.957 (2) (b) 1. (intro.) and (c) 2., (2m), and (3) (b) of the statutes takes effect on July 1, 2005.

(2) SALES TAX EXEMPTION FOR TEMPORARY SERVICES. The treatment of section 77.52 (2r) of the statutes takes effect on the first day of the 2nd month beginning after publication.

(END)

[Credit Agreement Provision for LRB 3380]

241.02(3). An action shall not be brought against a financial institution on or in connection with any of the following promises or commitments of the financial institution unless the promise or commitment is in writing, sets forth relevant terms and conditions and is signed with an authorized signature by the financial institution:

~~(a)~~ (1) a promise or commitment to lend money, grant or extend credit, or make any other financial accommodation; or

~~(b)~~ (2) a promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.

~~(4)~~ A promise or commitment by a financial institution described in subsection (3) may not be enforced under the doctrine of promissory estoppel.

(5) Subsection (3) does not apply to credit transactions that are subject to chs. 421 to 427.

(6) As used in subsection (3), "financial institution" means a bank, savings bank or saving 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. "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 a bank, savings bank, or savings and loan association.

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2003 – 2004 LEGISLATURE

LRB-0449/1
MES:jld:cph

insert 19-17

SENATE AMENDMENT
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 44

At the locations indicated, amend the substitute amendment as follows:

1. Page 598, line 6: after that line insert:

"**SECTION 1532p.** 66.0628 of the statutes is created to read:

66.0628 Fees imposed by a political subdivision. **(1)** In this section, "political subdivision" means a city, village, town, or county.

(2) Any fee that is imposed by a political subdivision shall bear a reasonable relationship to the service for which the fee is imposed.

(3) With regard to a fee that is first imposed, or an existing fee that is increased, on or after the effective date of this subsection .... [revisor inserts date], a political subdivision shall issue written findings that demonstrate that the fee meets the standard in sub. (2).

(END)

Except as provided in par. (d), no

INSERT 4A-25

[Credit Agreement Provision for LRB 3380]

(b)

may be commenced

~~241.02(3)~~ An action ~~shall not be brought~~ against a financial institution on or in connection with any of the following promises or commitments of the financial institution unless the promise or commitment is in writing, sets forth relevant terms and conditions and is signed ~~with an authorized signature~~ by the financial institution:

~~(a)~~ 1. a promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.

~~(b)~~ 2. a promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.

(c) Except as provided in par. (d),

~~(4)~~ A promise or commitment by a financial institution described in ~~subsection (3)~~ par. (b) may not be enforced under the doctrine of promissory estoppel.

Paragraphs (b) and (c) do

(d)

~~(5)~~ ~~Subsection (3) does~~ not apply to credit transactions that are subject to chs. 421 to 427.

(6) As used in subsection (3), "financial institution" ~~means a bank~~, savings bank or saving 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. "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 a bank, savings bank, or savings and loan association.

(end)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3380/~~P1~~dn
GM/RM/JTK/RK/RN/JK:~~kg~~:pg

~~October 24, 2003~~

Senator Stepp:

This redraft ~~includes the items submitted in your follow–up drafting instructions of October 15 and 21. Those items relate to the following:~~

1. The Uniform Electronic Transactions Act (UETA).
2. The confidentiality of patient health care records.
3. A sales tax exemption for temporary help services.
4. Retention by utilities of energy conservation dollars.
5. Recovery of economic development costs by utilities.
6. Real estate license reciprocity.

If you have ~~any questions about this draft, please do not hesitate to contact me or the drafting attorney directly.~~

~~Gordon M. Malaise~~
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us

As instructed, we used LRB–0176/1 as the base for the UETA (Uniform Electronic Transactions Act) provisions in this draft.

1. With the exception of the treatments discussed under item 2. below, this draft represents our combined efforts to engraft UETA into Wisconsin law. Incorporating UETA into Wisconsin law has been an extremely difficult task. Joint Rule 52 (6) requires the LRB, in drafting, to specifically refer to, and amend or repeal as necessary, all parts of the statutes that are intended to be superceded or repealed by a proposal, insofar as practicable. We have carried out this responsibility to the maximum extent possible. However, because certain provisions of UETA are susceptible to varying interpretations, the effect of these provisions on current statutes will, in some cases,

depend upon which interpretation the courts eventually adopt. Sometimes, we were able to consult the prefatory note and official comments accompanying UETA, in order to ascertain the intent of these provisions and their potential effect on other statutes if the interpretation suggested by the prefatory note and comments is adopted. 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 many cases, though, it was not possible to ascertain the intent, even with reference to the prefatory note and comments. In these cases, in order to encourage uniformity in the law of electronic commerce and, as discussed below, to avoid federal preemption under E–sign, we have not clarified the provisions.

2. With the exception of the treatments discussed below, this draft attempts to avoid preemption under the primary electronic commerce provisions of the federal Electronic Signatures in Global and National Commerce Act, commonly known as "E–sign." See the bill analysis for a discussion of the primary electronic commerce provisions of E–sign for a discussion of preemption issues. E–sign contains two methods of avoiding preemption. One method, which is established under 15 USC 7002 (a) (1), is to enact a law that constitutes UETA. The treatment of proposed ss. 137.01 (4) (a), 137.12 (2m) (d) and (f), and 137.20 (6) (b) and (7) in this draft was not included in the recommended version of UETA. This treatment may make this draft something other than "an enactment of [UETA] as approved and recommended for enactment in all the [states]" and, thus may take the bill out from under the first exemption from preemption under 15 USC 7002 (a) (1).

If the bill does not qualify for the first exemption from preemption, it may still qualify for the second exemption from preemption, which is established under 15 USC 7002 (a) (2). However, this second exemption is much more difficult to apply. The second exemption permits the state to enact laws that modify, limit, or supersede certain provisions of E–sign, as long as the laws specify 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 must be consistent with Titles I and II of E–sign. As outlined below, it is difficult to predict how a court would apply this exemption and, as a result, it is difficult to predict whether and to what extent this version of the draft would qualify for this exemption from preemption.

There are three primary interpretations of the manner in which the second exemption from preemption is intended to apply when a state enacts substantive provisions that are not uniform with the recommended version of UETA. Until a court rules on the issue, there is no way of knowing which interpretation will apply. Under the most literal interpretation, a court would be required to treat the state enactment as a coherent whole, rather than separately analyze individual statutes created in the enactment. As noted above, it is possible that this version of the draft would not qualify as an enactment of UETA as approved and recommended for enactment in all the states. Under this interpretation, as a result, the entire enactment would be preempted under 15 USC 7002 (a) (2) as inconsistent with Titles I and II of E–sign and would have no legal effect.

Under a second interpretation, a court would be required to analyze the individual statutes created in the draft, rather than treat the enactment as a coherent whole. Under this interpretation, all specific provisions that are uniform with UETA would be exempt from preemption under 15 USC 7002 (a) (1). The non–uniform provisions in proposed ss. 137.01 (4) (a), 137.12 (2m) (a), (e), and (g) and 137.20 (6) (b) and (7) would be analyzed separately under 15 USC 7002 (a) (2) to determine if the provisions are exempt from preemption under that section. Under this interpretation, the six provisions would likely be preempted under 15 USC 7002 (a) (2) as inconsistent with Titles I and II of E–sign.

Under a third interpretation, a court would treat the state enactment in different ways for different purposes. The court would first be required to treat the draft as a coherent whole in determining if, under 15 USC 7002 (a) (1), the law qualifies as an enactment of UETA. If the law is not an enactment of UETA, then the court would be required to analyze each individual statute, including a statute that *is* uniform with a UETA provision, under 15 USC 7002 (a) (2) to determine if the statute is exempt from preemption under that section. Under this interpretation proposed ss. 137.01 (4) (a), 137.12 (2m) (a) and (g), and 137.20 (6) (b) and (7) would likely be preempted as inconsistent with E–sign Titles I and II. In addition, any other provision that is

inconsistent with E–sign Titles I and II would likely be preempted, even if the provision is uniform with a UETA provision.

Because it is so difficult to predict how a court would apply the second exemption from preemption, you may want to avoid any treatment of ss. 137.01 (4) (a), 137.12 (2m) (a) and (g), and 137.20 (6) (b), (7), and (8) that may trigger the preemption analysis under the second exemption.

3. Current state law uses the term "record" as a noun about 4,000 times. Almost uniformly, the term "record" is currently used more narrowly than the word "record" in proposed s. 137.11 (12), the distinction being that "record" under current state law is generally used to describe something that is kept or required to be kept while "record" in UETA is apparently intended to cover anything other than an oral communication. In other words, the drafters of UETA apparently intended "record" to mean "document." The use of different meanings for the same term is contrary to normal drafting procedure and it may cause some confusion. This draft, however, maintains the usage of the word "record" in UETA (proposed subch. II of ch. 137), but generally retains other terminology outside UETA to avoid confusion in other statutes.

4. The draft defines "electronic" in proposed s. 137.11 (5) and "record" (document) in proposed s. 137.11 (12). The draft then defines "electronic record" in proposed s. 137.11 (7) in a way that is inconsistent with the definition of "electronic" and "record." Under the draft, a "record" must be *inscribed* on a tangible medium or *stored* in an electronic or other medium and be *retrievable* in a perceivable form. An "electronic" record is a record having *electrical, digital, magnetic, wireless, optical, electromagnetic,* OR similar capabilities. However, an "electronic record" is a record that is *created, generated, sent communicated, received, or stored* by electronic means. The resulting confusion could be mitigated by deleting the definition of "electronic" and building all

of the operative characteristics into the definition of "electronic record." However, we did not make this clarification because doing so may trigger preemption under E–sign.

5. This draft uses the term "governmental unit" rather than "governmental agency" because state authorities are included within the definition and, in Wisconsin, state authorities are not agencies. The draft also broadens the definition of "governmental unit" in proposed s. 137.11 (9) to include certain Wisconsin entities that might not otherwise be included in the definition, which appears to be consistent with the intent of the drafters of UETA. The only effect is on the optional provisions (in the draft, the proposed treatment of s. 137.05, stats., and proposed s. 137.25 (2)). We think this does not interfere with uniformity because the draft retains the substance of the UETA definition in full.

6. Under proposed s. 137.11 (7) and (12), the definition of "electronic record" and "record" include voice mail communications. Please note that, under these definitions, certain documents such as contracts, applications, licenses, or tax returns may potentially be evidenced by voice mail communications. In some cases, current law under E–sign already permits these documents to be evidenced by voice mail communications.

7. The exemptions in proposed s. 137.12 (2m) are problematic both as a matter of drafting and with regard to federal preemption. The exemptions for deeds, official court documents, and termination notices for telecommunications services in proposed s. 137.12 (2m) (a), (e), and (g) are inconsistent with the recommended version of UETA and with E–sign and, as a result, are likely to trigger preemption under 15 USC 7002 (a) (2). In addition, the remaining exemptions, which are based upon those contained in E–sign, raise potential preemption issues because the exemptions in E–sign may be rescinded by federal regulatory agencies. If this rescission happens, the exemptions in this draft may become inconsistent with those in E–sign. This inconsistency would likely result in some form of preemption.

Other than the exemption for deeds, telecommunications notices, and official court documents, we have tried to remain as consistent as possible with the language of the E–sign exemptions, in order to avoid preemption. However, the federal language itself has severe problems and does not meet our typical drafting standards. It is unclear what qualifies as a "matter of family law" as that phrase is used in E–sign and the exemption in proposed s. 137.12 (2m) (b). Does this phrase mean laws governing marriage, divorce, adoption, and paternity? What about powers of attorney, marital property, and guardianship? If it includes marital property laws, then this exception may be extremely broad, given the subject matter governed by s. 766.56, stats.

It is also unclear what qualifies as "hazardous materials, pesticides, or other toxic or dangerous materials" as that phrase is used in E–sign and proposed s. 137.12 (2m) (f). Does this phrase apply to fireworks and fertilizer?

It is also unclear what qualifies as "utility services (including heat, water, and power)" as that phrase is used in E–sign and proposed s. 137.12 (2m) (g). Is the phrase intended to limit the meaning of "utility services" to the three services listed in the parenthetical phrase or to include those three services, in addition to other potential utility services

like basic local telecommunications services under s. 196.01 (1g) and sewage system services under s. 196.01 (5) (a) 1.? Although this draft includes basic local telecommunications services in this list, that inclusion raises preemption issues as discussed above. This problem exemplifies why we try to avoid using "including" phrases in the statutes. These phrases may provide a court or an attorney with a method for avoiding the intended breadth of the original reference. See, for example, *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527 (1974) and *State v. Engler*, 80 Wis. 2d 402, 407–8 (1977).

With regard to notices of foreclosure, eviction, and the like, the federal exemption and that in proposed s. 137.12 (2m) (h) probably is intended to apply to notices provided to the individual who resides in the particular dwelling. Unfortunately, the exemption is worded more broadly than that. For example, the exemption would cover a foreclosure notice that is given to the landlord of a dwelling that is not owner–occupied, if the dwelling is occupied by a tenant who rents the dwelling as a primary residence.

The exemption for notices of termination of "health insurance or benefits" in E–sign and proposed s. 137.12 (2m) (i) is also likely broader than is intended under E–sign and this bill. It is unclear what benefits are covered by the exemption. For example, does the exemption cover only health benefits (whatever that term means), or does it apply to benefits of employment (like disability insurance, the right to purchase stock options, or a right granted under an employee manual), public assistance benefits, or benefits of membership in a music club?

8. Under proposed s. 137.12 (1), UETA applies to electronic records (documents) and electronic signatures relating to a "transaction." A "transaction" is defined in proposed s. 137.11 (15) to mean action between persons relating to the conduct of business, commercial, or governmental affairs. The prefatory note and comments suggest that the application of UETA to governmental affairs may be limited to activities where the government is a market participant (for example, governmental procurement). The text does not seem to explicitly reflect that interpretation. However, because the optional sections of UETA (the treatment of s. 137.05, stats., and proposed s. 137.25 (2)) clearly contemplate application beyond "transactions," this draft clarifies in proposed s. 137.12 (1) that the optional sections affect matters other than "transactions." Another issue that has been raised with respect to the definition of "transaction" is that the text does not clearly indicate that UETA applies to consumer–to–consumer transactions, even though the comments suggest that it does.

9. Because some Wisconsin case law suggests that regulatory statutes will not be applied to the state absent an express indication by the legislature that they should so apply (see, for example, *State ex rel. Dept. of Public Instruction v. ILHR Dept.* 68 Wis.2d 677, 681 (1975)), and because UETA is clearly intended to regulate state conduct, at least in part, this draft provides in proposed s. 137.12 (5) that UETA applies to this state, unless otherwise expressly provided. We think this does not interfere with uniformity because the text retains all of the substance of UETA and this clarification carries out the intent of UETA.

10. You may want to clarify the interaction of proposed ss. 137.13 (2) and 137.15 (1), in order to make the intended result of these statutes more apparent. Proposed s.

137.13 (2) states that the subchapter of the statutes that constitutes UETA only applies to transactions between parties who have agreed to conduct transactions electronically. Proposed s. 137.15 (1) states that a document or signature may not be denied legal effect solely because it is in electronic form. The manner in which these two statutes relate could be more clearly stated.

For example, a problem may arise if a person (A) makes a written offer to contract with another person (B), and if B then communicates its acceptance in electronic form. If A refuses to deal electronically, B may argue that the acceptance is enforceable under proposed s. 137.15 (1). According to B, the only reason the acceptance would not be enforceable is because it is in electronic form and, under proposed s. 137.15 (1), this reason is insufficient to deny the enforceability of the document. According to A, however, proposed s. 137.15 (1) does not apply to the transaction because A did not consent to deal electronically. This result is dictated by proposed s. 137.13 (2), which applies a consent requirement to the entire subchapter that constitutes UETA.

To make this result more straightforward, you may want to clarify that proposed s. 137.15 applies only to transactions between consenting parties. Although this type of clarification is currently used in proposed s. 137.16 we did not include it in this bill because to do so might trigger preemption under E–sign.

11. Proposed s. 137.13 (3) provides that a party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. In practice, this provision may be difficult to apply because it may be unclear when one transaction ends and another begins.

12. Proposed s. 137.14 (3) provides that UETA shall be construed and applied to effectuate its general purpose to make uniform the law with respect to the subject of UETA among states enacting it. This draft provides that UETA shall be construed and applied to effectuate its general purpose among states enacting laws *substantially similar* to UETA. The reason that we loosened this a little is that this draft is not identical to UETA (although we believe it preserves the substance of it) and most states enacting UETA have not enacted verbatim versions. We think this is consistent with the intent of the drafters.

13. Proposed s. 137.15 (4) provides that if a law requires a signature, an electronic signature satisfies that requirement in that law. Although the comments indicate this was not intended, under the text of proposed s. 137.11 (8), an "electronic signature" may be associated with a nonelectronic document. Therefore, the effect of proposed s. 137.15 (4) is to permit an electronic signature to be used to sign a nonelectronic document. In UETA **SECTION 18**, which is optional (see the treatment of s. 137.05, stats., by this draft), we have limited the use of electronic signatures to sign electronic documents, since this is consistent with the intent of UETA and no preemption issue arises under this optional provision.

14. You may also want to clarify the interaction of proposed s. 137.16 (1) and (2). Proposed s. 137.16 (1) generally permits the parties to a transaction to satisfy any writing requirement through the use of an electronic record. However, proposed s. 137.16 (2) (b), among other things, preserves the effect of any law that requires a record to be communicated by a specified method. To the extent that "in writing" is a specified

method of communicating a record, this provision may be read to override proposed s. 137.16 (1). You may avoid this result by clarifying that proposed s. 137.16 (2) (b) does not apply to writing requirements covered by proposed s. 137.16 (1).

15. Proposed s. 137.20 (1) provides that if a law requires that a document be retained, the requirement is satisfied by retaining the information set forth in the document as an electronic document which accurately reflects 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 text is intended to ensure that content is retained when documents are reformatted. The text, however, may be interpreted to permit earlier versions of documents to be destroyed, notwithstanding retention requirements. Because it is not unusual to retain earlier versions of some documents for reference, you may want to clarify that this subsection is not intended to permit the disposal of these versions.

16. Proposed s. 137.20 (2) provides that document retention requirements in proposed s. 137.20 (1) do not apply to any information the sole purpose of which is to enable a document to be sent, communicated, or received. The comments suggest that if ancillary information is not retained, an electronic document may still be used to satisfy a retention requirement. Ancillary information, such as a date, time, or address, may be significant in some cases, and you may not want to permit destruction of this information.

17. Consistent with your instructions, this draft preserves the effect of certain existing laws with regard to public records. See proposed s. 137.20 (6) (b). Please review this treatment to ensure it satisfies your intent. As discussed previously, this treatment may be viewed as going beyond the recommended version of UETA and, therefore, may trigger preemption under E–sign. Also, please note that proposed s. 137.20 (1), (4), and (6) likely authorize a custodian of *private* records to destroy original records if an electronic copy is retained.

18. Proposed s. 137.20 (5) provides that if a law requires retention of a check, the requirement is satisfied by retention of an electronic document containing the information on the front and back of the check in the manner provided in the draft. The term "check" is not defined in the draft. It is unclear whether this provision applies to other kinds of negotiable instruments, such as share drafts and money orders. However, since proposed s. 137.20 (1) and (4) suggest the same thing as proposed s. 137.20 (5) in more general terms, it is possible that proposed s. 137.20 (5) may be interpreted to be redundant.

19. Proposed s. 137.20 (6) (a) provides that an electronic document satisfies a law requiring retention of a document for evidentiary, audit, or like purposes, unless a law enacted after UETA specifically prohibits the use of an electronic document for retention purposes. Insofar as this provision attempts to force future legislatures to express their intent in a particular way in order for their laws to have legal effect, this provision is unenforceable. *State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 363–369 (1983). In addition, the qualifying language "for evidentiary, audit, or like purposes" appears to put this subsection in tension with proposed ss. 137.15 (3) and 137.20 (1) and (4), which contain similar statements but do not include the qualifying language.

20. Proposed s. 137.20 (7) provides that the retention provisions of UETA do not preclude a governmental unit of this state from specifying additional requirements for any document subject to the jurisdiction of the governmental unit. This subsection seems to contravene proposed s. 137.20 (1), (4), and (6) (a), which provide that compliance with the retention requirements in those subsections is sufficient in some cases. In addition, it is unclear from the text whether this provision applies to governmental documents or to nongovernmental documents subject to a governmental unit's jurisdiction. The comments suggest that the latter interpretation was intended, but the authority of a particular governmental unit to exercise control over specific private documents may be unclear in some cases. Finally, it is unclear whether this subsection is intended to grant rule–making authority or merely to reference existing rule–making authority, if any.

21. Proposed s. 137.23 (2) provides that an electronic document is received when it enters a recipient's designated information processing system and is in a form capable of being processed by that system, and proposed s. 137.15 (1) and (3) permit electronic documents to be substituted for nonelectronic documents and require that they be given the same legal effect. These provisions may have the result of altering laws under which the date of receipt of a document filed with a governmental unit is the date on which a hard copy is received or postmarked, so that electronic filing constitutes receipt instead. The application of this subsection depends upon whether UETA's application to governmental units is limited to transactions and whether the requirement for mutual consent in proposed s. 137.13 (2) overrides proposed s. 137.15 (1) and (3), which do not mention mutual consent.

22. Proposed s. 137.23 (4) (a) provides that, generally, an electronic document is deemed to be sent from the sender's place of business and, if the sender does business at more than one location, an electronic document is deemed to be sent from the location that has "the closest relationship to the underlying transaction." To the extent that an electronic document may evidence a sale, with the seller receiving payment electronically, a business could use proposed s. 137.23 (4) (a) to argue that a sale occurred at a location where the business is not subject to an income tax or franchise tax rather than at a location, such as this state, where the business is subject to such taxes. If a court accepted that argument, the business would receive income from such a sale but avoid paying any tax on that income. Although the comments to UETA seem to indicate that the above scenario is not an intended consequence of proposed s. 137.23 (4) (a), you should be aware that, under the proposed language of that paragraph, that scenario is possible.

23. Proposed s. 137.23 (7) treats the issue of what law applies when an electronic document is purportedly but not actually sent or received. Although the text of this subsection refers to "the legal effect of the sending or receipt," the provision actually seems to address the legal effect of a *failure* to send or receive an electronic document.

24. Unlike the primary electronic commerce provisions of E–sign, proposed s. 137.24, relating to transferable records (electronic versions of certain documents under the Uniform Commercial Code), may be preempted by E–sign because it is more expansive than current law under E–sign. However, because it is possible to comply with E–sign

and proposed s. 137.24, it is also possible that these provisions may be interpreted to be consistent with one another, in which case proposed s. 137.24 would not be preempted by current law under E–sign. If you would like more information on this issue or would like to discuss the factors that a court may apply in analyzing this issue, please feel free to call.

25. **SECTIONS 17** to **19** of UETA are optional. **SECTION 17**, which directs governmental units to determine whether and to what extent they will create and retain electronic records and convert electronic records to written records, is deleted because it largely reflects current law. See, for example, ss. 16.61 (5) (a) and 19.21 (4) (c), stats. The coverage of these and other current statutes, while broad, is arguably not quite as broad as UETA **SECTION 17** because the operative term "state agency" is more narrowly defined in s. 16.61, stats., and the operative term "local governmental unit" is not defined in s. 19.21, stats. This draft, in contrast to current law but consistently with the intent of UETA, incorporates a broad definition of "governmental unit." However, since the legislature has addressed this issue in this state, we decided not to revisit the issue in this draft.

26. **SECTION 18**, which directs governmental units to determine whether and to what extent they will send and accept electronic records and electronic signatures, is replaced by s. 137.05, stats., which is renumbered as proposed s. 137.25 (1) and amended by this draft to better conform with our understanding of your intent.

27. **SECTION 19**, which permits governmental units to encourage interoperability between jurisdictions, is retained as proposed s. 137.25 (2) but is significantly clarified per our understanding of your intent. This draft also broadens the definition of "governmental unit" to employ Wisconsin terminology and ensure that all Wisconsin governmental units are covered, which appears to be consistent with the drafters' intent.

28. **SECTION 22** of the original draft provides for the state to insert its desired effective date. Since we have no instruction on this point, we have not inserted any effective date. Under this draft, the act takes effect on the day after publication.

29. There are numerous provisions in current law that require that a notice, request, statement, application, document, or other information (notice) be provided to a governmental unit in writing or that the notice be sent or mailed, suggesting that it be provided in written form. Under current law in s. 137.05, stats., and under this draft in proposed s. 137.25, most of those notices may be provided in electronic form if the governmental unit consents to receiving the notice in electronic form. Without an examination of each of those notice provisions, it is not possible to determine whether any particular provision should be amended to specify that the notice may only be furnished in written form and not in electronic form because, for example, electronic notice was not intended or contemplated by the provision when it was enacted. Because this issue arises under current law, because the application of UETA to each of these provisions is not completely clear, and because it is impractical to examine each of these provisions, the draft does not treat any of these provisions. Consequently, under this draft, as under current law, most of the provisions in current law requiring a notice to be given to a governmental unit in writing or to be sent or mailed to a

governmental unit, may be satisfied by furnishing the notice in electronic form if the governmental unit consents to receive it in that form.

If you have any questions concerning UETA or desire any changes to the UETA provisions in this draft, please let us know.

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DRAFTER'S NOTE LRB–3380/P4dn
FROM THE RM/JTK/RK/RN/JK:kjf&kg:rs
LEGISLATIVE REFERENCE BUREAU

October 31, 2003

Senator Stepp:

This redraft makes requested changes to the provisions dealing with lawsuits against financial institutions. Please note that one category of lawsuit treated by proposed s. 241.02 (3) deals with "a promise or commitment to ... make any other financial accommodation." The term "financial accommodation" is undefined. It is not clear what it means. For example, it could include a revision of an employment contract or a contract that a financial institution has with another business (for example, with a painter or remodeler). You may want to tighten this language to more precisely address your intent. The remainder of this note is from the previous version of the draft.

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As instructed, we used LRB–0176/1 as the base for the UETA (Uniform Electronic Transactions Act) provisions in this draft.

1. With the exception of the treatments discussed under item 2. below, this draft represents our combined efforts to engraft UETA into Wisconsin law. Incorporating UETA into Wisconsin law has been an extremely difficult task. Joint Rule 52 (6) requires the LRB, in drafting, to specifically refer to, and amend or repeal as necessary, all parts of the statutes that are intended to be superceded or repealed by a proposal, insofar as practicable. We have carried out this responsibility to the maximum extent possible. However, because certain provisions of UETA are susceptible to varying interpretations, the effect of these provisions on current statutes will, in some cases, depend upon which interpretation the courts eventually adopt. Sometimes, we were able to consult the prefatory note and official comments accompanying UETA, in order to ascertain the intent of these provisions and their potential effect on other statutes if the interpretation suggested by the prefatory note and comments is adopted. 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 many cases, though, it was not possible to ascertain the intent, even with reference to the prefatory note and comments. In these cases, in order to encourage uniformity in the law of electronic commerce and, as discussed below, to avoid federal preemption under E–sign, we have not clarified the provisions.

2. With the exception of the treatments discussed below, this draft attempts to avoid preemption under the primary electronic commerce provisions of the federal Electronic Signatures in Global and National Commerce Act, commonly known as "E–sign." See the bill analysis for a discussion of the primary electronic commerce provisions of E–sign for a discussion of preemption issues. E–sign contains two methods of avoiding preemption. One method, which is established under 15 USC 7002 (a) (1), is to enact a law that constitutes UETA. The treatment of proposed ss. 137.01 (4) (a), 137.12 (2m) (d) and (f), and 137.20 (6) (b) and (7) in this draft was not included in the recommended version of UETA. This treatment may make this draft something other than "an enactment of [UETA] as approved and recommended for enactment in all the [states]" and, thus may take the bill out from under the first exemption from preemption under 15 USC 7002 (a) (1).

If the bill does not qualify for the first exemption from preemption, it may still qualify for the second exemption from preemption, which is established under 15 USC 7002 (a) (2). However, this second exemption is much more difficult to apply. The second exemption permits the state to enact laws that modify, limit, or supersede certain provisions of E–sign, as long as the laws specify 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 must be consistent with Titles I and II of E–sign. As outlined below, it is difficult to predict how a court would apply this exemption and, as a result, it is difficult to predict whether and to what extent this version of the draft would qualify for this exemption from preemption.

There are three primary interpretations of the manner in which the second exemption from preemption is intended to apply when a state enacts substantive provisions that are not uniform with the recommended version of UETA. Until a court rules on the issue, there is no way of knowing which interpretation will apply. Under the most literal interpretation, a court would be required to treat the state enactment as a coherent whole, rather than separately analyze individual statutes created in the enactment. As noted above, it is possible that this version of the draft would not qualify as an enactment of UETA as approved and recommended for enactment in all the states. Under this interpretation, as a result, the entire enactment would be preempted under 15 USC 7002 (a) (2) as inconsistent with Titles I and II of E–sign and would have no legal effect.

Under a second interpretation, a court would be required to analyze the individual statutes created in the draft, rather than treat the enactment as a coherent whole. Under this interpretation, all specific provisions that are uniform with UETA would be exempt from preemption under 15 USC 7002 (a) (1). The non–uniform provisions in proposed ss. 137.01 (4) (a), 137.12 (2m) (a), (e), and (g) and 137.20 (6) (b) and (7)

would be analyzed separately under 15 USC 7002 (a) (2) to determine if the provisions are exempt from preemption under that section. Under this interpretation, the six provisions would likely be preempted under 15 USC 7002 (a) (2) as inconsistent with Titles I and II of E–sign.

Under a third interpretation, a court would treat the state enactment in different ways for different purposes. The court would first be required to treat the draft as a coherent whole in determining if, under 15 USC 7002 (a) (1), the law qualifies as an enactment of UETA. If the law is not an enactment of UETA, then the court would be required to analyze each individual statute, including a statute that *is* uniform with a UETA provision, under 15 USC 7002 (a) (2) to determine if the statute is exempt from preemption under that section. Under this interpretation proposed ss. 137.01 (4) (a), 137.12 (2m) (a) and (g), and 137.20 (6) (b) and (7) would likely be preempted as inconsistent with E–sign Titles I and II. In addition, any other provision that is

inconsistent with E–sign Titles I and II would likely be preempted, even if the provision is uniform with a UETA provision.

Because it is so difficult to predict how a court would apply the second exemption from preemption, you may want to avoid any treatment of ss. 137.01 (4) (a), 137.12 (2m) (a) and (g), and 137.20 (6) (b), (7), and (8) that may trigger the preemption analysis under the second exemption.

3. Current state law uses the term "record" as a noun about 4,000 times. Almost uniformly, the term "record" is currently used more narrowly than the word "record" in proposed s. 137.11 (12), the distinction being that "record" under current state law is generally used to describe something that is kept or required to be kept while "record" in UETA is apparently intended to cover anything other than an oral communication. In other words, the drafters of UETA apparently intended "record" to mean "document." The use of different meanings for the same term is contrary to normal drafting procedure and it may cause some confusion. This draft, however, maintains the usage of the word "record" in UETA (proposed subch. II of ch. 137), but generally retains other terminology outside UETA to avoid confusion in other statutes.

4. The draft defines "electronic" in proposed s. 137.11 (5) and "record" (document) in proposed s. 137.11 (12). The draft then defines "electronic record" in proposed s. 137.11 (7) in a way that is inconsistent with the definition of "electronic" and "record." Under the draft, a "record" must be *inscribed* on a tangible medium or *stored* in an electronic or other medium and be *retrievable* in a perceivable form. An "electronic" record is a record having *electrical, digital, magnetic, wireless, optical, electromagnetic,* OR similar capabilities. However, an "electronic record" is a record that is *created, generated, sent communicated, received, or stored* by electronic means. The resulting confusion could be mitigated by deleting the definition of "electronic" and building all of the operative characteristics into the definition of "electronic record." However, we did not make this clarification because doing so may trigger preemption under E–sign.

5. This draft uses the term "governmental unit" rather than "governmental agency" because state authorities are included within the definition and, in Wisconsin, state authorities are not agencies. The draft also broadens the definition of "governmental

unit" in proposed s. 137.11 (9) to include certain Wisconsin entities that might not otherwise be included in the definition, which appears to be consistent with the intent of the drafters of UETA. The only effect is on the optional provisions (in the draft, the proposed treatment of s. 137.05, stats., and proposed s. 137.25 (2)). We think this does not interfere with uniformity because the draft retains the substance of the UETA definition in full.

6. Under proposed s. 137.11 (7) and (12), the definition of "electronic record" and "record" include voice mail communications. Please note that, under these definitions, certain documents such as contracts, applications, licenses, or tax returns may potentially be evidenced by voice mail communications. In some cases, current law under E–sign already permits these documents to be evidenced by voice mail communications.

7. The exemptions in proposed s. 137.12 (2m) are problematic both as a matter of drafting and with regard to federal preemption. The exemptions for deeds, official court documents, and termination notices for telecommunications services in proposed s. 137.12 (2m) (a), (e), and (g) are inconsistent with the recommended version of UETA and with E–sign and, as a result, are likely to trigger preemption under 15 USC 7002 (a) (2). In addition, the remaining exemptions, which are based upon those contained in E–sign, raise potential preemption issues because the exemptions in E–sign may be rescinded by federal regulatory agencies. If this rescission happens, the exemptions in this draft may become inconsistent with those in E–sign. This inconsistency would likely result in some form of preemption.

Other than the exemption for deeds, telecommunications notices, and official court documents, we have tried to remain as consistent as possible with the language of the E–sign exemptions, in order to avoid preemption. However, the federal language itself has severe problems and does not meet our typical drafting standards. It is unclear what qualifies as a "matter of family law" as that phrase is used in E–sign and the exemption in proposed s. 137.12 (2m) (b). Does this phrase mean laws governing marriage, divorce, adoption, and paternity? What about powers of attorney, marital property, and guardianship? If it includes marital property laws, then this exception may be extremely broad, given the subject matter governed by s. 766.56, stats.

It is also unclear what qualifies as "hazardous materials, pesticides, or other toxic or dangerous materials" as that phrase is used in E–sign and proposed s. 137.12 (2m) (f). Does this phrase apply to fireworks and fertilizer?

It is also unclear what qualifies as "utility services (including heat, water, and power)" as that phrase is used in E–sign and proposed s. 137.12 (2m) (g). Is the phrase intended to limit the meaning of "utility services" to the three services listed in the parenthetical phrase or to include those three services, in addition to other potential utility services like basic local telecommunications services under s. 196.01 (1g) and sewage system services under s. 196.01 (5) (a) 1.? Although this draft includes basic local telecommunications services in this list, that inclusion raises preemption issues as discussed above. This problem exemplifies why we try to avoid using "including" phrases in the statutes. These phrases may provide a court or an attorney with a method for avoiding the intended breadth of the original reference. See, for example,

State ex rel. Harris v. Larson, 64 Wis. 2d 521, 527 (1974) and *State v. Engler*, 80 Wis. 2d 402, 407–8 (1977).

With regard to notices of foreclosure, eviction, and the like, the federal exemption and that in proposed s. 137.12 (2m) (h) probably is intended to apply to notices provided to the individual who resides in the particular dwelling. Unfortunately, the exemption is worded more broadly than that. For example, the exemption would cover a foreclosure notice that is given to the landlord of a dwelling that is not owner–occupied, if the dwelling is occupied by a tenant who rents the dwelling as a primary residence.

The exemption for notices of termination of "health insurance or benefits" in E–sign and proposed s. 137.12 (2m) (i) is also likely broader than is intended under E–sign and this bill. It is unclear what benefits are covered by the exemption. For example, does the exemption cover only health benefits (whatever that term means), or does it apply to benefits of employment (like disability insurance, the right to purchase stock options, or a right granted under an employee manual), public assistance benefits, or benefits of membership in a music club?

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9. Because some Wisconsin case law suggests that regulatory statutes will not be applied to the state absent an express indication by the legislature that they should so apply (see, for example, *State ex rel. Dept. of Public Instruction v. ILHR Dept.* 68 Wis.2d 677, 681 (1975)), and because UETA is clearly intended to regulate state conduct, at least in part, this draft provides in proposed s. 137.12 (5) that UETA applies to this state, unless otherwise expressly provided. We think this does not interfere with uniformity because the text retains all of the substance of UETA and this clarification carries out the intent of UETA.

10. You may want to clarify the interaction of proposed ss. 137.13 (2) and 137.15 (1), in order to make the intended result of these statutes more apparent. Proposed s. 137.13 (2) states that the subchapter of the statutes that constitutes UETA only applies to transactions between parties who have agreed to conduct transactions electronically. Proposed s. 137.15 (1) states that a document or signature may not be denied legal effect solely because it is in electronic form. The manner in which these two statutes relate could be more clearly stated.

For example, a problem may arise if a person (A) makes a written offer to contract with another person (B), and if B then communicates its acceptance in electronic form. If A refuses to deal electronically, B may argue that the acceptance is enforceable under proposed s. 137.15 (1). According to B, the only reason the acceptance would not be enforceable is because it is in electronic form and, under proposed s. 137.15 (1), this reason is insufficient to deny the enforceability of the document. According to A, however, proposed s. 137.15 (1) does not apply to the transaction because A did not consent to deal electronically. This result is dictated by proposed s. 137.13 (2), which applies a consent requirement to the entire subchapter that constitutes UETA.

To make this result more straightforward, you may want to clarify that proposed s. 137.15 applies only to transactions between consenting parties. Although this type of clarification is currently used in proposed s. 137.16 we did not include it in this bill because to do so might trigger preemption under E–sign.

11. Proposed s. 137.13 (3) provides that a party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. In practice, this provision may be difficult to apply because it may be unclear when one transaction ends and another begins.

12. Proposed s. 137.14 (3) provides that UETA shall be construed and applied to effectuate its general purpose to make uniform the law with respect to the subject of UETA among states enacting it. This draft provides that UETA shall be construed and applied to effectuate its general purpose among states enacting laws *substantially similar* to UETA. The reason that we loosened this a little is that this draft is not identical to UETA (although we believe it preserves the substance of it) and most states enacting UETA have not enacted verbatim versions. We think this is consistent with the intent of the drafters.

13. Proposed s. 137.15 (4) provides that if a law requires a signature, an electronic signature satisfies that requirement in that law. Although the comments indicate this was not intended, under the text of proposed s. 137.11 (8), an "electronic signature" may be associated with a nonelectronic document. Therefore, the effect of proposed s. 137.15 (4) is to permit an electronic signature to be used to sign a nonelectronic document. In UETA **SECTION 18**, which is optional (see the treatment of s. 137.05, stats., by this draft), we have limited the use of electronic signatures to sign electronic documents, since this is consistent with the intent of UETA and no preemption issue arises under this optional provision.

14. You may also want to clarify the interaction of proposed s. 137.16 (1) and (2). Proposed s. 137.16 (1) generally permits the parties to a transaction to satisfy any writing requirement through the use of an electronic record. However, proposed s. 137.16 (2) (b), among other things, preserves the effect of any law that requires a record to be communicated by a specified method. To the extent that "in writing" is a specified method of communicating a record, this provision may be read to override proposed s. 137.16 (1). You may avoid this result by clarifying that proposed s. 137.16 (2) (b) does not apply to writing requirements covered by proposed s. 137.16 (1).

15. Proposed s. 137.20 (1) provides that if a law requires that a document be retained, the requirement is satisfied by retaining the information set forth in the document as

an electronic document which accurately reflects 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 text is intended to ensure that content is retained when documents are reformatted. The text, however, may be interpreted to permit earlier versions of documents to be destroyed, notwithstanding retention requirements. Because it is not unusual to retain earlier versions of some documents for reference, you may want to clarify that this subsection is not intended to permit the disposal of these versions.

16. Proposed s. 137.20 (2) provides that document retention requirements in proposed s. 137.20 (1) do not apply to any information the sole purpose of which is to enable a document to be sent, communicated, or received. The comments suggest that if ancillary information is not retained, an electronic document may still be used to satisfy a retention requirement. Ancillary information, such as a date, time, or address, may be significant in some cases, and you may not want to permit destruction of this information.

17. Consistent with your instructions, this draft preserves the effect of certain existing laws with regard to public records. See proposed s. 137.20 (6) (b). Please review this treatment to ensure it satisfies your intent. As discussed previously, this treatment may be viewed as going beyond the recommended version of UETA and, therefore, may trigger preemption under E–sign. Also, please note that proposed s. 137.20 (1), (4), and (6) likely authorize a custodian of *private* records to destroy original records if an electronic copy is retained.

18. Proposed s. 137.20 (5) provides that if a law requires retention of a check, the requirement is satisfied by retention of an electronic document containing the information on the front and back of the check in the manner provided in the draft. The term "check" is not defined in the draft. It is unclear whether this provision applies to other kinds of negotiable instruments, such as share drafts and money orders. However, since proposed s. 137.20 (1) and (4) suggest the same thing as proposed s. 137.20 (5) in more general terms, it is possible that proposed s. 137.20 (5) may be interpreted to be redundant.

19. Proposed s. 137.20 (6) (a) provides that an electronic document satisfies a law requiring retention of a document for evidentiary, audit, or like purposes, unless a law enacted after UETA specifically prohibits the use of an electronic document for retention purposes. Insofar as this provision attempts to force future legislatures to express their intent in a particular way in order for their laws to have legal effect, this provision is unenforceable. *State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 363–369 (1983). In addition, the qualifying language "for evidentiary, audit, or like purposes" appears to put this subsection in tension with proposed ss. 137.15 (3) and 137.20 (1) and (4), which contain similar statements but do not include the qualifying language.

20. Proposed s. 137.20 (7) provides that the retention provisions of UETA do not preclude a governmental unit of this state from specifying additional requirements for any document subject to the jurisdiction of the governmental unit. This subsection seems to contravene proposed s. 137.20 (1), (4), and (6) (a), which provide that compliance with the retention requirements in those subsections is sufficient in some

cases. In addition, it is unclear from the text whether this provision applies to governmental documents or to nongovernmental documents subject to a governmental unit's jurisdiction. The comments suggest that the latter interpretation was intended, but the authority of a particular governmental unit to exercise control over specific private documents may be unclear in some cases. Finally, it is unclear whether this subsection is intended to grant rule–making authority or merely to reference existing rule–making authority, if any.

21. Proposed s. 137.23 (2) provides that an electronic document is received when it enters a recipient's designated information processing system and is in a form capable of being processed by that system, and proposed s. 137.15 (1) and (3) permit electronic documents to be substituted for nonelectronic documents and require that they be given the same legal effect. These provisions may have the result of altering laws under which the date of receipt of a document filed with a governmental unit is the date on which a hard copy is received or postmarked, so that electronic filing constitutes receipt instead. The application of this subsection depends upon whether UETA's application to governmental units is limited to transactions and whether the requirement for mutual consent in proposed s. 137.13 (2) overrides proposed s. 137.15 (1) and (3), which do not mention mutual consent.

22. Proposed s. 137.23 (4) (a) provides that, generally, an electronic document is deemed to be sent from the sender's place of business and, if the sender does business at more than one location, an electronic document is deemed to be sent from the location that has "the closest relationship to the underlying transaction." To the extent that an electronic document may evidence a sale, with the seller receiving payment electronically, a business could use proposed s. 137.23 (4) (a) to argue that a sale occurred at a location where the business is not subject to an income tax or franchise tax rather than at a location, such as this state, where the business is subject to such taxes. If a court accepted that argument, the business would receive income from such a sale but avoid paying any tax on that income. Although the comments to UETA seem to indicate that the above scenario is not an intended consequence of proposed s. 137.23 (4) (a), you should be aware that, under the proposed language of that paragraph, that scenario is possible.

23. Proposed s. 137.23 (7) treats the issue of what law applies when an electronic document is purportedly but not actually sent or received. Although the text of this subsection refers to "the legal effect of the sending or receipt," the provision actually seems to address the legal effect of a *failure* to send or receive an electronic document.

24. Unlike the primary electronic commerce provisions of E–sign, proposed s. 137.24, relating to transferable records (electronic versions of certain documents under the Uniform Commercial Code), may be preempted by E–sign because it is more expansive than current law under E–sign. However, because it is possible to comply with E–sign and proposed s. 137.24, it is also possible that these provisions may be interpreted to be consistent with one another, in which case proposed s. 137.24 would not be preempted by current law under E–sign. If you would like more information on this issue or would like to discuss the factors that a court may apply in analyzing this issue, please feel free to call.

25. **SECTIONS 17** to **19** of UETA are optional. **SECTION 17**, which directs governmental units to determine whether and to what extent they will create and retain electronic records and convert electronic records to written records, is deleted because it largely reflects current law. See, for example, ss. 16.61 (5) (a) and 19.21 (4) (c), stats. The coverage of these and other current statutes, while broad, is arguably not quite as broad as UETA **SECTION 17** because the operative term "state agency" is more narrowly defined in s. 16.61, stats., and the operative term "local governmental unit" is not defined in s. 19.21, stats. This draft, in contrast to current law but consistently with the intent of UETA, incorporates a broad definition of "governmental unit." However, since the legislature has addressed this issue in this state, we decided not to revisit the issue in this draft.

26. **SECTION 18**, which directs governmental units to determine whether and to what extent they will send and accept electronic records and electronic signatures, is replaced by s. 137.05, stats., which is renumbered as proposed s. 137.25 (1) and amended by this draft to better conform with our understanding of your intent.

27. **SECTION 19**, which permits governmental units to encourage interoperability between jurisdictions, is retained as proposed s. 137.25 (2) but is significantly clarified per our understanding of your intent. This draft also broadens the definition of "governmental unit" to employ Wisconsin terminology and ensure that all Wisconsin governmental units are covered, which appears to be consistent with the drafters' intent.

28. **SECTION 22** of the original draft provides for the state to insert its desired effective date. Since we have no instruction on this point, we have not inserted any effective date. Under this draft, the act takes effect on the day after publication.

29. There are numerous provisions in current law that require that a notice, request, statement, application, document, or other information (notice) be provided to a governmental unit in writing or that the notice be sent or mailed, suggesting that it be provided in written form. Under current law in s. 137.05, stats., and under this draft in proposed s. 137.25, most of those notices may be provided in electronic form if the governmental unit consents to receiving the notice in electronic form. Without an examination of each of those notice provisions, it is not possible to determine whether any particular provision should be amended to specify that the notice may only be furnished in written form and not in electronic form because, for example, electronic notice was not intended or contemplated by the provision when it was enacted. Because this issue arises under current law, because the application of UETA to each of these provisions is not completely clear, and because it is impractical to examine each of these provisions, the draft does not treat any of these provisions. Consequently, under this draft, as under current law, most of the provisions in current law requiring a notice to be given to a governmental unit in writing or to be sent or mailed to a governmental unit, may be satisfied by furnishing the notice in electronic form if the governmental unit consents to receive it in that form.

If you have any questions concerning UETA or desire any changes to the UETA provisions in this draft, please let us know.

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Kunkel, Mark

From: Manley, Scott
Sent: Monday, November 03, 2003 12:12 PM
To: Kunkel, Mark
Cc: Malaise, Gordon
Subject: LRB 3380/P4

Mark,

Following up on the voice mail message I left for you, below is the change to the "miscellaneous" portion of our omnibus regulatory reform draft. With this change, LRB 3380/4 is ready to go.

Thank you!

Scott Manley
Chief of Staff
Senator Cathy Stepp
State Capitol, Room 7 South
(608) 266-1832

LRB-3380/4, amend the draft as follows: page 39, delete lines 9 through 12 and substitute:

"196.03 (7) In determining a reasonably adequate public utility gas or electricity service or a reasonable and just charge for that public utility gas or electricity service, the Commission shall consider costs incurred by the public utility for economic development activities that support and promote customer service load retention and load growth in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest."

[See s.196.03 (6) for comparable language re telecommunications.]

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–3380/P4
RT/MK/MS/GM/RM:kjf&kg:rs

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 137.04, 137.06, 196.491 (3) (g) 1m. and 224.30 (2); ***to renumber*** 196.491 (3) (g) 1.; ***to renumber and amend*** 137.05 (title) and 137.05; ***to amend*** 16.957 (2) (b) 1. (intro.), 16.957 (2) (c) 2., 16.957 (3) (b), 25.96, 66.1001 (2) (e), 66.1001 (4) (a), 106.01 (9), 106.025 (4), 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], 146.82 (2) (a) (intro.), 196.195 (10), 196.374 (3), 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., 221.0901 (8) (a) and (b), 452.09 (2) (a), 452.09 (2) (c) (intro.), 452.09 (3) (d), 889.29 (1), 910.01 (1), 910.02 and 910.03; and ***to create*** 16.957 (2m), 66.0628, 66.1001 (4) (e), 77.52 (2r), 106.04, 137.11 to 137.24, 137.25 (2), 146.82 (2) (a) 22., 196.03 (7), 196.195 (5m), 196.374 (3m), 241.02 (3), 295.13 (4) and 452.05 (3) 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, 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, comprehensive planning by local governmental units, fees imposed by political subdivisions, the confidentiality of patient health care records, apprentice–to–journeyman job–site ratios, the acquisition of in–state banks and in–state bank holding companies, credits agreements, electronic notarization and acknowledgement, electronic transactions and records, a sales tax exemption for temporary help services, extending the time limit for emergency rule procedures, 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, contributions to and grants from the utility public benefits fund, ~~recovery~~ of economic development costs by electric and gas utilities, reciprocal agreements for real estate licenses, comprehensive planning by local governmental units, fees imposed by political subdivisions, the confidentiality of patient health care records, apprentice–to–journeyman job–site ratios, the acquisition of in–state banks and in–state bank holding companies, electronic notarizations and acknowledgements, electronic transactions and records, a sales tax exemption for temporary help services, 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.

UTILITY PUBLIC BENEFITS FUND

Under current law, certain electric and gas utilities are required to make contributions to the PSC in each fiscal year. The PSC deposits the contributions in the utility public benefits fund (fund), which also consists of monthly fees paid by utility customers. The fund is used by the Department of Administration (DOA) to make grants for low–income assistance, energy conservation and efficiency, environmental research and development, and renewable resource programs. The amount that each utility must contribute to the PSC is the amount that the PSC determines that the utility spent in 1998 on its own programs that are similar to the programs awarded grants by DOA.

Under this bill, the PSC may allow a utility to retain a portion of the amount that it is required to contribute in each fiscal year under current law. However, the PSC may allow a utility to do so only if the PSC determines that the portion is used by the utility for energy conservation programs for industrial, commercial, and agricultural customers in the utility's service area. Also, the programs must comply

with rules promulgated by the PSC. The rules must specify annual energy savings targets that the programs must be designed to achieve. The rules must also require a utility to demonstrate that, within a reasonable period of time determined by the PSC, the economic benefits of such a program will be equal to the portion of the contribution that the PSC allows the utility to retain. If the PSC allows a utility to retain such a portion, the utility must contribute 1.75 percent of the portion to the PSC, which the PSC must deposit in the fund for DOA to use for programs for research and development for energy conservation and efficiency. In addition, the utility must contribute 4.5 percent of the portion to the PSC for deposit in the fund for DOA to use for renewable resource programs. The bill also requires the PSC to allow a utility to recover in rates any expenses related to administration, marketing, or delivery of services for the utility's energy conservation programs, and prohibits a utility from paying for such expenses from the portion of a contribution the utility is allowed to retain.

The bill also requires the PSC to promulgate rules for the grants made by DOA from the fund for energy conservation and other programs. Under the bill, an applicant is not eligible for such a grant unless the applicant's proposal for the grant complies with rules promulgated by the PSC. The rules must require an applicant to demonstrate that, within a reasonable period of time determined by the PSC, the economic benefits resulting from the proposal will be equal to the amount of the grant. The rules must also specify annual energy savings targets that a such proposal must be designed to achieve.

RECOVERY OF ECONOMIC DEVELOPMENT COSTS BY ELECTRIC AND GAS UTILITIES

Under current law, the PSC regulates rates charged to consumers by gas and electric utilities. This bill authorizes the PSC to allow such utilities to recover in rates the costs of promoting economic development, including infrastructure deployment that is necessary for providing gas or electricity.

INSERT 4A

RECIPROCAL AGREEMENTS FOR REAL ESTATE LICENSES

Under current law, the Department of Regulation and Licensing (DRL) grants licenses that allow persons to practice as real estate brokers or salespersons. Current law specifies the requirements a person must satisfy to obtain such a license. The Real Estate Board (board) advises DRL on rules regarding licensing and other matters.

This bill allows DRL to grant licenses to persons licensed as real estate brokers or salespersons in other states and territories, in addition to persons who satisfy the requirements specified under current law. Under the bill, DRL may, after consulting with the board, enter into reciprocal agreements with officials of other states or territories for granting licenses to persons licensed in those states or territories.

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.

FEES IMPOSED BY POLITICAL SUBDIVISIONS

Under current law, cities, villages, towns, and counties (political subdivisions) provide various services for which those political subdivisions may impose a fee. This bill requires that any fee imposed by a political subdivision bear a reasonable relationship to the service for which the fee is imposed and that, when a political subdivision first imposes or raises a fee, the political subdivision issue written findings that demonstrate that the fee bears a reasonable relationship to the service for which the fee is imposed.

PATIENT HEALTH CARE RECORDS

Under current state law, patient health care records must remain confidential and may be released by a health care provider only with the informed consent of the patient or of a person authorized by the patient. However, patient health care records are required to be released without informed consent by the health care provider in specified circumstances, including for patient treatment, health care provider payment and medical records management, and certain audits, program monitoring, accreditation, and health care services review activities by health care facility staff committees or accreditation or review organizations.

Under current federal law, patient health care information may be released without patient authorization by health care providers for, among other purposes, treatment, payment, and health care operations. "Health care operations" is defined in federal law to include quality assessment and improvement activities; credentialing or evaluating of health care practitioners and training; underwriting; medical review, legal services, and auditing; business planning and development; and business management and general administrative activities.

This bill modifies the requirement for release of patient health care records without patient consent to authorize, rather than require, release under specified circumstances, and to eliminate the requirement that a request for the records be received before release. The bill also increases the circumstances under which patient health care records are authorized to be released without patient informed consent, to include purposes of health care operations, as defined and authorized in federal law.

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 FINANCIAL INSTITUTIONS

With certain exceptions, this bill prohibits any person from bringing a lawsuit against a bank, savings bank, savings and loan association, or any affiliate of such an institution (financial institution) based upon any of the following promises or commitments of the financial institution, unless the promise or commitment is in writing, sets forth relevant terms and conditions, and is signed by the financial institution: 1) a promise or commitment to lend money, grant or extend credit, or make any other financial accommodation; or 2) a promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation. This prohibition does not apply to transactions that are 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).

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 any promise or commitment described above may not be enforced under the doctrine of promissory estoppel. This prohibition does not apply to transactions that are subject to the Wisconsin Consumer Act.

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