

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

#### **ELECTRONIC NOTARIZATIONS, ACKNOWLEDGEMENTS, TRANSACTIONS, AND RECORDS**

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

#### ***Current law regarding electronic documents, transactions, and signatures***

Currently, a combination of state and federal laws govern the use of electronic records, transactions, and signatures in this state. The most significant federal law in this regard is the Electronic Signatures in Global and National Commerce Act, commonly known as "E-sign," which was enacted after UETA was recommended for enactment in all of the states. With certain exceptions relating to existing or pending document retention requirements, E-sign took effect on October 1, 2000. Although much of E-sign represents new law in this state, some of the issues addressed in E-sign were addressed under state law previous to E-sign. With certain exceptions, E-sign preempts the state law to the extent that the treatment is inconsistent with the treatment under E-sign.

#### **1. PUBLIC RECORDS**

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

#### **2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS**

Current law relating to the acceptance of electronic documents by governmental units in this state is ambiguous. Under current state law, any document that is required by law to be submitted in writing to a governmental unit and that requires a written signature may be submitted in an electronic format, as long as the governmental unit consents. Current state law does not require any governmental unit to accept documents in an electronic format, but provides that an

electronic signature may be substituted for a manual signature if certain requirements are met.

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

### **3. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE**

#### *Promissory notes*

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

#### *Other documents and records*

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

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

transaction may not be denied legal effect solely because an electronic signature or electronic document was used in its formation.

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

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

#### *Consumer protections*

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

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

#### *Exemptions*

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

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

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

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

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

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

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

8. Product recall notices.

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

A federal regulatory agency may remove any of these exemptions, as the particular exemption applies to a matter within the agency's jurisdiction, if the agency finds that the exemption is no longer necessary for the protection of consumers and that the elimination of the exemption will not increase the material risk of harm to consumers.

#### *Limits on the scope of Title I*

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

#### *State authority under Title I*

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

### ***Relationship between E-sign and UETA***

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

Because this bill makes certain substantive changes to UETA and in some cases it is not clear whether the text is consistent with the intent of the version of UETA recommended for enactment in all of the states, it is difficult to determine whether the bill qualifies for an exception from preemption and, if enacted, the extent to which the bill would likely supplant the primary electronic commerce provisions of E-sign in this state.

### ***UETA***

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

#### **1. PUBLIC RECORDS**

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

#### **2. ACCEPTANCE OF ELECTRONIC DOCUMENTS BY GOVERNMENTAL UNITS**

The same ambiguities regarding the acceptance of electronic documents by governmental units exist under this bill as exist currently under E-sign, although

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

With certain exceptions, this bill grants the Department of Electronic Government (DEG) primary rule-making authority with regard to the use of electronic documents and signatures by governmental units and grants DEG and the secretary of state joint rule-making authority with regard to electronic notarizations. In addition, this bill requires DEG's rules to include standards regarding the receipt of electronic documents and the acceptance or electronic signatures by governmental units, in order to promote consistency and interoperability with similar standards adopted by other governmental units, the federal government, and other persons interacting with governmental units of this state.

### **3. ELECTRONIC DOCUMENTS AND SIGNATURES IN COMMERCE**

#### *Rule of construction*

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

#### *Applicability and definitions*

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

The bill defines "transaction" to mean an action or set of actions between two or more persons relating to the conduct of business, commercial, or governmental affairs. Although this definition may be interpreted broadly to include a typical interaction with the government like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers

the actions of the government as a market participant. In addition, although the definition does not expressly cover consumer-to-consumer or consumer-to-business transactions, it is possible to interpret this definition, consistent with the official comments, to cover these transactions.

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

#### *Agreements to use electronic documents and electronic signatures*

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

#### *Consumer protections*

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

#### *Legal effect of electronic documents and electronic signatures*

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

#### *Effect of laws relating to the provision of information*

Under this bill, if the parties to a transaction have agreed to conduct the transaction electronically and if a law requires a person to provide, send, or deliver

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

The bill also specifies that, with certain exceptions, a document must satisfy any law requiring the document to be posted or displayed in a certain manner; to be sent, communicated, or transmitted by a specified method; or to contain information that is formatted in a certain manner. There are three possible interpretations of this provision. First, the provision may prohibit the use of an electronic document if a law requires the document to be posted, displayed, sent, communicated, transmitted, or formatted on paper. Second, the provision may instead require a paper document to be used in addition to an electronic document in these circumstances. Third, consistent with the comments, the provision may require the parties to a transaction to comply with any legal requirement relating to the provision of information *other than a requirement that the information be provided on paper*.

#### *Attribution of electronic documents*

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

#### *Effect of change or error*

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



provided by other law, including the law of mistake, and by any applicable contract between the parties.

*Electronic notarization and acknowledgement*

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

*Retention of electronic documents*

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

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

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

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

#### *Evidence*

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

#### *Automated transactions*

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

#### *Time and location of electronic sending and receipt*

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

These provisions may be interpreted to alter laws under which the date of receipt of a public record submitted for filing is the date on which a paper copy is received or postmarked, so that the date of electronic filing constitutes the date of

receipt instead. However, as noted earlier, this bill specifically states that it applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Although the definition of “transaction” may be interpreted broadly to include a typical governmental action like the filing of a document, the prefatory note and comments to UETA imply that a narrower interpretation is intended which covers only the actions of the government as a market participant. If the narrower interpretation applies, then these provisions will likely have no effect upon the filing of most public records.

Under this bill, an electronic document is deemed to be sent from the sender’s place of business that has the closest relationship to the underlying transaction and to be received at the recipient’s place of business that has the closest relationship to the underlying transaction. If the sender or recipient does not have a place of business, the electronic document is deemed to be sent or received from the sender’s or recipient’s residence. The bill also permits a sender to expressly provide in an electronic document that the document is deemed to be sent from a different location. The bill also permits the parties to a transaction to agree to alter the effect of these provisions on the transaction. To the extent that an electronic document may constitute a sale, with the seller receiving payment electronically, these provisions may be interpreted to permit a seller to argue that a sale occurred in a jurisdiction where the seller is not subject to a tax that would otherwise be imposed under Wisconsin law. However, the official comments imply that this interpretation is not intended.

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

#### *Transferable records*

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

#### **SALES TAX EXEMPTION FOR TEMPORARY HELP SERVICES**

Under this bill, no part of the charge for services provided by a temporary help company is subject to the sales tax, if the client for whom the services are provided controls the means of performing the services and is responsible for the satisfactory completion of the services. Under current law, a temporary help company is,

generally, any entity that contracts with a client to supply individuals to perform services for the client on a temporary basis.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

---

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

1           **SECTION 1.** 16.957 (2) (b) 1. (intro.) of the statutes is amended to read:

2           16.957 (2) (b) 1. (intro.) Subject to subd. 2. and the rules promulgated under  
3 sub. (2m), after holding a hearing, establish programs for awarding grants from the  
4 appropriation under s. 20.505 (3) (s) for each of the following:

5           **SECTION 2.** 16.957 (2) (c) 2. of the statutes is amended to read:

6           16.957 (2) (c) 2. Requirements and procedures for applications for grants  
7 awarded under programs established under par. (a) or (b) 1. The rules for grants  
8 awarded under programs established under par. (b) 1. may not be inconsistent with  
9 the rules promulgated by the commission under sub. (2m).

10          **SECTION 3.** 16.957 (2m) of the statutes is created to read:

11          16.957 (2m) **ENERGY CONSERVATION AND EFFICIENCY GRANTS.** The commission  
12 shall promulgate rules that provide that a proposal for providing energy  
13 conservation or efficiency services is not eligible for a grant under sub. (2) (b) unless  
14 the applicant demonstrates that, no later than a reasonable period of time, as  
15 determined by the commission, after the applicant begins to implement the proposal,  
16 the economic value of the benefits resulting from the proposal will be equal to the  
17 amount of the grant. The rules shall also specify annual energy savings targets that

1 a such proposal must be designed to achieve in order for the proposal to be eligible  
2 for a grant under sub. (2) (b).

3 **SECTION 4.** 16.957 (3) (b) of the statutes is amended to read:

4 16.957 (3) (b) The department shall, on the basis of competitive bids, contract  
5 with one or more nonstock, nonprofit corporations organized under ch. 181 to  
6 administer the programs established under sub. (2) (b) 1., including soliciting  
7 proposals, processing grant applications, selecting, based on criteria specified in  
8 rules promulgated under sub. (2) (c) 2m. and the standards established in the rules  
9 promulgated under sub. (2m), proposals for the department to make awards and  
10 distributing grants to recipients.

11 **SECTION 5.** 25.96 of the statutes is amended to read:

12 **25.96 Utility public benefits fund.** There is established a separate  
13 nonlapsible trust fund designated as the utility public benefits fund, consisting of  
14 deposits by the public service commission under s. 196.374 (3) and (3m), public  
15 benefits fees received under s. 16.957 (4) (a) and (5) (c) and (d) and contributions  
16 received under s. 16.957 (2) (c) 4. and (d) 2.

17 **SECTION 6.** 66.0628 of the statutes is created to read:

18 **66.0628 Fees imposed by a political subdivision.** (1) In this section,  
19 “political subdivision” means a city, village, town, or county.

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

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

1           **SECTION 7.** 66.1001 (2) (e) of the statutes is amended to read:

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

11           **SECTION 8.** 66.1001 (4) (a) of the statutes is amended to read:

12           66.1001 (4) (a) The governing body of a local governmental unit shall adopt  
13 written procedures that are designed to foster public participation, including open  
14 discussion, communication programs, information services, and public meetings for  
15 which advance notice has been provided, in every stage of the preparation of a  
16 comprehensive plan. The written procedures shall provide for wide distribution of  
17 proposed, alternative, or amended elements of a comprehensive plan and shall  
18 provide an opportunity for written comments on the plan to be submitted by  
19 members of the public to the governing body and for the governing body to respond  
20 to such written comments. The written procedures shall describe the methods the  
21 governing body of a local governmental unit will use to distribute proposed,  
22 alternative, or amended elements of a comprehensive plan to owners of property, or  
23 to persons who have a leasehold interest in property pursuant to which the persons  
24 may extract nonmetallic mineral resources in or on property, in which the allowable  
25 use or intensity of use, of the property, is changed by the comprehensive plan.

1           **SECTION 9.** 66.1001 (4) (e) of the statutes is created to read:

2           66.1001 (4) (e) At least 30 days before the hearing described in par. (d) is held,  
3 a local governmental unit shall provide written notice to all owners of property, and  
4 all leaseholders who have an interest in property pursuant to which the persons may  
5 extract nonmetallic mineral resources, in which the allowable use or intensity of use,  
6 of the property, is changed by the comprehensive plan, including all of the following:

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

9           2. A person who has registered a marketable nonmetallic mineral deposit  
10 under s. 295.20.

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

13           **SECTION 10.** 77.52 (2r) of the statutes is created to read:

14           77.52 (2r) No part of the charge for services provided by a temporary help  
15 company, as defined in s. 108.02 (24m), is subject to tax under sub. (2), if the client  
16 for whom the services are provided controls the means of performing the services and  
17 is responsible for the satisfactory completion of the services.

18           **SECTION 11.** 106.01 (9) of the statutes is amended to read:

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

1 103.005 (12) apply to violations of this section. Orders issued under this subsection  
2 are subject to review under ch. 227.

3 **SECTION 12.** 106.025 (4) of the statutes is amended to read:

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

13 **SECTION 13.** 106.04 of the statutes is created to read:

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

18 **SECTION 14.** Chapter 137 (title) of the statutes is amended to read:

19 **CHAPTER 137**

20 **AUTHENTIFICATIONS AND ELECTRONIC**

21 **TRANSACTIONS AND RECORDS**

22 **SECTION 15.** Subchapter I (title) of chapter 137 [precedes 137.01] of the statutes  
23 is amended to read:

24 **CHAPTER 137**



1 SUBCHAPTER I  
2 NOTARIES AND COMMISSIONERS  
3 OF DEEDS; ELECTRONIC AND  
4 NONELECTRONIC NOTARIZATION AND  
5 ACKNOWLEDGEMENT

6 SECTION 16. 137.01 (3) (a) of the statutes is amended to read:

7 137.01 (3) (a) ~~Every~~ Except as authorized in sub. (4) (a) and s. 137.19, every  
8 notary public shall provide an engraved official seal which makes a distinct and  
9 legible impression or official rubber stamp which makes a distinct and legible  
10 imprint on paper. The impression of the seal or the imprint of the rubber stamp shall  
11 state only the following: “Notary Public,” “State of Wisconsin” and the name of the  
12 notary. But any notarial seal in use on August 1, 1959, shall be considered in  
13 compliance.

14 SECTION 17. 137.01 (4) (a) of the statutes is amended to read:

15 137.01 (4) (a) Every official act of a notary public shall be attested by the notary  
16 public’s written signature or electronic signature, as defined in s. ~~137.04 (2)~~ 137.11  
17 (8). The department of electronic government and the secretary of state shall jointly  
18 promulgate rules prescribing a method for attaching or associating an electronic  
19 signature and other required information with a signature or record under s. 137.19.  
20 The department of electronic government and the secretary of state shall jointly  
21 promulgate rules establishing requirements that a notary public must satisfy in  
22 order to use an electronic signature for any attestation other than an attestation  
23 under s. 137.19. All joint rules promulgated under this paragraph shall be numbered  
24 as rules of each agency in the Wisconsin Administrative Code.

25 SECTION 18. 137.01 (4) (b) of the statutes is amended to read:

1           137.01 (4) (b) ~~All~~ Except as authorized in par. (a) and s. 137.19, all certificates  
2 of acknowledgments of deeds and other conveyances, or any written instrument  
3 required or authorized by law to be acknowledged or sworn to before any notary  
4 public, within this state, shall be attested by a clear impression of the official seal or  
5 imprint of the rubber stamp of said officer, and in addition thereto shall be written  
6 or stamped either the day, month and year when the commission of said notary public  
7 will expire, or that such commission is permanent.

8           **SECTION 19.** Subchapter II (title) of chapter 137 [precedes 137.04] of the  
9 statutes is amended to read:

10   **CHAPTER 137**

11   **SUBCHAPTER II**

12   **ELECTRONIC SIGNATURES**

13   **TRANSACTIONS AND RECORDS;**

14   **ELECTRONIC NOTARIZATION**

15   **AND ACKNOWLEDGEMENT**

16           **SECTION 20.** 137.04 of the statutes is repealed.

17           **SECTION 21.** 137.05 (title) of the statutes is renumbered 137.25 (title) and  
18 amended to read:

19           **137.25 (title)     Submission of ~~written documents~~ records to**  
20 **governmental units; interoperability.**

21           **SECTION 22.** 137.05 of the statutes is renumbered 137.25 (1) and amended to  
22 read:

23           **137.25 (1)** Unless otherwise ~~prohibited~~ provided by law, with the consent of a  
24 **governmental unit of this state that is to receive a record, any document record** that  
25 is required by law to be submitted in writing to ~~a~~ that governmental unit and that

1 requires a written signature may be submitted by transforming the document into  
2 as an electronic format, but only with the consent of the governmental unit that is  
3 to receive the document record, and if submitted as an electronic record may  
4 incorporate an electronic signature.

5 **SECTION 23.** 137.06 of the statutes is repealed.

6 **SECTION 24.** 137.11 to 137.24 of the statutes are created to read:

7 **137.11 Definitions.** In this subchapter:

8 (1) “Agreement” means the bargain of the parties in fact, as found in their  
9 language or inferred from other circumstances and from rules, regulations, and  
10 procedures given the effect of agreements under laws otherwise applicable to a  
11 particular transaction.

12 (2) “Automated transaction” means a transaction conducted or performed, in  
13 whole or in part, by electronic means or by the use of electronic records, in which the  
14 acts or records of one or both parties are not reviewed by an individual in the ordinary  
15 course in forming a contract, performing under an existing contract, or fulfilling an  
16 obligation required by the transaction.

17 (3) “Computer program” means a set of statements or instructions to be used  
18 directly or indirectly in an information processing system in order to bring about a  
19 certain result.

20 (4) “Contract” means the total legal obligation resulting from the parties’  
21 agreement as affected by this subchapter and other applicable law.

22 (5) “Electronic” means relating to technology having electrical, digital,  
23 magnetic, wireless, optical, electromagnetic, or similar capabilities.

24 (6) “Electronic agent” means a computer program or an electronic or other  
25 automated means used independently to initiate an action or respond to electronic

1 records or performances in whole or in part, without review or action by an  
2 individual.

3 (7) “Electronic record” means a record that is created, generated, sent,  
4 communicated, received, or stored by electronic means.

5 (8) “Electronic signature” means an electronic sound, symbol, or process  
6 attached to or logically associated with a record and executed or adopted by a person  
7 with the intent to sign the record.

8 (9) “Governmental unit” means:

9 (a) An agency, department, board, commission, office, authority, institution, or  
10 instrumentality of the federal government or of a state or of a political subdivision  
11 of a state or special purpose district within a state, regardless of the branch or  
12 branches of government in which it is located.

13 (b) A political subdivision of a state or special purpose district within a state.

14 (c) An association or society to which appropriations are made by law.

15 (d) Any body within one or more of the entities specified in pars. (a) to (c) that  
16 is created or authorized to be created by the constitution, by law, or by action of one  
17 or more of the entities specified in pars. (a) to (c).

18 (e) Any combination of any of the entities specified in pars. (a) to (d).

19 (10) “Information” means data, text, images, sounds, codes, computer  
20 programs, software, databases, or the like.

21 (11) “Information processing system” means an electronic system for creating,  
22 generating, sending, receiving, storing, displaying, or processing information.

23 (12) “Record” means information that is inscribed on a tangible medium or that  
24 is stored in an electronic or other medium and is retrievable in perceivable form.

1           (13) “Security procedure” means a procedure employed for the purpose of  
2 verifying that an electronic signature, record, or performance is that of a specific  
3 person or for detecting changes or errors in the information in an electronic record.  
4 The term includes a procedure that requires the use of algorithms or other codes,  
5 identifying words or numbers, encryption, callback, or other acknowledgment  
6 procedures.

7           (14) “State” means a state of the United States, the District of Columbia,  
8 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject  
9 to the jurisdiction of the United States. The term includes an Indian tribe or band,  
10 or Alaskan native village, which is recognized by federal law or formally  
11 acknowledged by a state.

12           (15) “Transaction” means an action or set of actions occurring between 2 or  
13 more persons relating to the conduct of business, commercial, or governmental  
14 affairs.

15           **137.115 Relation to federal law.** For the purpose of satisfying 15 USC 7002  
16 (a) (2) (B) as that statute relates to this subchapter, this state acknowledges the  
17 existence of the Electronic Signatures in Global and National Commerce Act, 15 USC  
18 7001 to 7031.

19           **137.12 Application.** (1) Except as otherwise provided in subs. (2) and (2m)  
20 and except in s. 137.25, this subchapter applies to electronic records and electronic  
21 signatures relating to a transaction.

22           (2) Except as otherwise provided in sub. (3), this subchapter does not apply to  
23 a transaction to the extent it is governed by:

24           (a) Any law governing the execution of wills or the creation of testamentary  
25 trusts; or

1 (b) Chapters 401 and 403 to 410, other than ss. 401.107 and 401.206.

2 (2m) This subchapter does not apply to any of the following records or any  
3 transaction evidenced by any of the following records:

4 (a) Records governed by any law relating to adoption, divorce, or other matters  
5 of family law.

6 (b) Notices provided by a court.

7 (c) Court orders or judgements.

8 (d) Official court documents, including, but not limited to, briefs, pleadings,  
9 affidavits, memorandum decisions, and other writings, required to be executed in  
10 connection with court proceedings.

11 (e) Records required by law to accompany any transportation or handling of  
12 hazardous materials, pesticides, or other toxic or dangerous materials.

13 (f) Notices of cancelation or termination of utility services, including heat,  
14 water, basic local telecommunications services, and power.

15 (g) Notices of default, acceleration, repossession, foreclosure, or eviction, or the  
16 right to cure, under a credit agreement secured by, or a rental agreement for, a  
17 primary residence of an individual.

18 (h) Notices of the cancellation or termination of health insurance or benefits  
19 or life insurance benefits other than annuities.

20 (i) Notices of the recall of a product, or the material failure of a product, that  
21 risks endangering health or safety.

22 (3) This subchapter applies to an electronic record or electronic signature  
23 otherwise excluded from the application of this subchapter under sub. (2) to the  
24 extent it is governed by a law other than those specified in sub. (2).

1           (4) A transaction subject to this subchapter is also subject to other applicable  
2 substantive law.

3           (5) This subchapter applies to the state of Wisconsin, unless otherwise  
4 expressly provided.

5           **137.13 Use of electronic records and electronic signatures; variation**  
6 **by agreement.** (1) This subchapter does not require a record or signature to be  
7 created, generated, sent, communicated, received, stored, or otherwise processed or  
8 used by electronic means or in electronic form.

9           (2) This subchapter applies only to transactions between parties each of which  
10 has agreed to conduct transactions by electronic means. Whether the parties agree  
11 to conduct a transaction by electronic means is determined from the context and  
12 surrounding circumstances, including the parties' conduct.

13           (3) A party that agrees to conduct a transaction by electronic means may refuse  
14 to conduct other transactions by electronic means. The right granted by this  
15 subsection may not be waived by agreement.

16           (4) Except as otherwise provided in this subchapter, the effect of any provision  
17 of this subchapter may be varied by agreement. Use of the words "unless otherwise  
18 agreed," or words of similar import, in this subchapter shall not be interpreted to  
19 preclude other provisions of this subchapter from being varied by agreement.

20           (5) Whether an electronic record or electronic signature has legal consequences  
21 is determined by this subchapter and other applicable law.

22           **137.14 Construction.** This subchapter shall be construed and applied:

23           (1) To facilitate electronic transactions consistent with other applicable law;

24           (2) To be consistent with reasonable practices concerning electronic  
25 transactions and with the continued expansion of those practices; and

1           (3) To effectuate its general purpose to make uniform the law with respect to  
2 the subject of this subchapter among states enacting laws substantially similar to  
3 the Uniform Electronic Transactions Act as approved and recommended by the  
4 National Conference of Commissioners on Uniform State Laws in 1999.

5           **137.15 Legal recognition of electronic records, electronic signatures,**  
6 **and electronic contracts.** (1) A record or signature may not be denied legal effect  
7 or enforceability solely because it is in electronic form.

8           (2) A contract may not be denied legal effect or enforceability solely because an  
9 electronic record was used in its formation.

10           (3) If a law requires a record to be in writing, an electronic record satisfies that  
11 requirement in that law.

12           (4) If a law requires a signature, an electronic signature satisfies that  
13 requirement in that law.

14           **137.16 Provision of information in writing; presentation of records.**

15           (1) If parties have agreed to conduct a transaction by electronic means and a law  
16 requires a person to provide, send, or deliver information in writing to another  
17 person, a party may satisfy the requirement with respect to that transaction if the  
18 information is provided, sent, or delivered, as the case may be, in an electronic record  
19 capable of retention by the recipient at the time of receipt. An electronic record is not  
20 capable of retention by the recipient if the sender or its information processing  
21 system inhibits the ability of the recipient to print or store the electronic record.

22           (2) If a law other than this subchapter requires a record to be posted or  
23 displayed in a certain manner, to be sent, communicated, or transmitted by a  
24 specified method, or to contain information that is formatted in a certain manner,  
25 then:



1 (a) The record shall be posted or displayed in the manner specified in the other  
2 law.

3 (b) Except as otherwise provided in sub. (4) (b), the record shall be sent,  
4 communicated, or transmitted by the method specified in the other law.

5 (c) The record shall contain the information formatted in the manner specified  
6 in the other law.

7 (3) If a sender inhibits the ability of a recipient to store or print an electronic  
8 record, the electronic record is not enforceable against the recipient.

9 (4) The requirements of this section may not be varied by agreement, but:

10 (a) To the extent a law other than this subchapter requires information to be  
11 provided, sent, or delivered in writing but permits that requirement to be varied by  
12 agreement, the requirement under sub. (1) that the information be in the form of an  
13 electronic record capable of retention may also be varied by agreement; and

14 (b) A requirement under a law other than this subchapter to send,  
15 communicate, or transmit a record by 1st class or regular mail or with postage  
16 prepaid may be varied by agreement to the extent permitted by the other law.

17 **137.17 Attribution and effect of electronic records and electronic**  
18 **signatures.** (1) An electronic record or electronic signature is attributable to a  
19 person if the electronic record or electronic signature was created by the act of the  
20 person. The act of the person may be shown in any manner, including a showing of  
21 the efficacy of any security procedure applied to determine the person to which the  
22 electronic record or electronic signature was attributable.

23 (2) The effect of an electronic record or electronic signature that is attributed  
24 to a person under sub. (1) is determined from the context and surrounding

1 circumstances at the time of its creation, execution, or adoption, including the  
2 parties' agreement, if any, and otherwise as provided by law.

3 **137.18 Effect of change or error.** (1) If a change or error in an electronic  
4 record occurs in a transmission between parties to a transaction, then:

5 (a) If the parties have agreed to use a security procedure to detect changes or  
6 errors and one party has conformed to the procedure, but the other party has not, and  
7 the nonconforming party would have detected the change or error had that party also  
8 conformed, the conforming party may avoid the effect of the changed or erroneous  
9 electronic record.

10 (b) In an automated transaction involving an individual, the individual may  
11 avoid the effect of an electronic record that resulted from an error made by the  
12 individual in dealing with the electronic agent of another person if the electronic  
13 agent did not provide an opportunity for the prevention or correction of the error and,  
14 at the time the individual learns of the error, the individual:

15 1. Promptly notifies the other person of the error and that the individual did  
16 not intend to be bound by the electronic record received by the other person;

17 2. Takes reasonable steps, including steps that conform to the other person's  
18 reasonable instructions, to return to the other person or, if instructed by the other  
19 person, to destroy the consideration received, if any, as a result of the erroneous  
20 electronic record; and

21 3. Has not used or received any benefit or value from the consideration, if any,  
22 received from the other person.

23 (2) If neither sub. (1) (a) nor (b) applies, the change or error has the effect  
24 provided by other law, including the law of mistake, and the parties' contract, if any.

25 (3) Subsections (1) (b) and (2) may not be varied by agreement.

1           **137.19 Notarization and acknowledgement.** If a law requires a signature  
2 or record to be notarized, acknowledged, verified, or made under oath, the  
3 requirement is satisfied if, consistent with any applicable rules promulgated under  
4 s. 137.01 (4) (a), the electronic signature of the person authorized to administer the  
5 oath or to make the notarization, acknowledgment, or verification, together with all  
6 other information required to be included by other applicable law, is attached to or  
7 logically associated with the signature or record.

8           **137.20 Retention of electronic records; originals.** (1) Except as provided  
9 in sub. (6), if a law requires that a record be retained, the requirement is satisfied  
10 by retaining the information set forth in the record as an electronic record which:

11           (a) Accurately reflects the information set forth in the record after it was first  
12 generated in its final form as an electronic record or otherwise; and

13           (b) Remains accessible for later reference.

14           (2) A requirement to retain a record in accordance with sub. (1) does not apply  
15 to any information the sole purpose of which is to enable the record to be sent,  
16 communicated, or received.

17           (3) A person may comply with sub. (1) by using the services of another person  
18 if the requirements of that subsection are satisfied.

19           (4) Except as provided in sub. (6), if a law requires a record to be presented or  
20 retained in its original form, or provides consequences if the record is not presented  
21 or retained in its original form, a person may comply with that law by using an  
22 electronic record that is retained in accordance with sub. (1).

23           (5) Except as provided in sub. (6), if a law requires retention of a check, that  
24 requirement is satisfied by retention of an electronic record containing the  
25 information on the front and back of the check in accordance with sub. (1).

1           (6) (a) Except as provided in par. (b), a record retained as an electronic record  
2 in accordance with sub. (1) satisfies a law requiring a person to retain a record for  
3 evidentiary, audit, or like purposes, unless a law enacted after the effective date of  
4 this paragraph .... [revisor inserts date], specifically prohibits the use of an electronic  
5 record for the specified purpose.

6           (b) A governmental unit that has custody of a record is also further subject to  
7 the retention requirements for public records of state agencies and the records of the  
8 University of Wisconsin Hospitals and Clinics Authority established under ss. 16.61  
9 and 16.611 and the retention requirements for documents of local governmental  
10 units established under s. 16.612.

11           (7) The public records board may promulgate rules prescribing standards  
12 consistent with this subchapter for retention of records by state agencies, the  
13 University of Wisconsin Hospitals and Clinics Authority and local governmental  
14 units.

15           (8) This section does not preclude the public records board, the department of  
16 electronic government, or any other governmental unit of this state from specifying  
17 additional requirements for the retention of any record of another governmental unit  
18 subject to its jurisdiction.

19           **137.21 Admissibility in evidence.** In a proceeding, a record or signature  
20 may not be excluded as evidence solely because it is in electronic form.

21           **137.22 Automated transactions.** In an automated transaction:

22           (1) A contract may be formed by the interaction of electronic agents of the  
23 parties, even if no individual was aware of or reviewed the electronic agent's actions  
24 or the resulting terms and agreements.

1           (2) A contract may be formed by the interaction of an electronic agent and an  
2 individual, acting on the individual's own behalf or for another person, including by  
3 an interaction in which the individual performs actions that the individual is free to  
4 refuse to perform and which the individual knows or has reason to know will cause  
5 the electronic agent to complete the transaction or performance.

6           (3) The terms of a contract under sub. (1) or (2) are governed by the substantive  
7 law applicable to the contract.

8           **137.23 Time and place of sending and receipt.** (1) Unless otherwise  
9 agreed between the sender and the recipient, an electronic record is sent when it:

10           (a) Is addressed properly or otherwise directed properly to an information  
11 processing system that the recipient has designated or uses for the purpose of  
12 receiving electronic records or information of the type sent and from which the  
13 recipient is able to retrieve the electronic record;

14           (b) Is in a form capable of being processed by that system; and

15           (c) Enters an information processing system outside the control of the sender  
16 or of a person that sent the electronic record on behalf of the sender or enters a region  
17 of the information processing system designated or used by the recipient which is  
18 under the control of the recipient.

19           (2) Unless otherwise agreed between a sender and the recipient, an electronic  
20 record is received when:

21           (a) It enters an information processing system that the recipient has  
22 designated or uses for the purpose of receiving electronic records or information of  
23 the type sent and from which the recipient is able to retrieve the electronic record;  
24 and

25           (b) It is in a form capable of being processed by that system.

1           (3) Subsection (2) applies even if the place where the information processing  
2 system is located is different from the place where the electronic record is deemed  
3 to be received under sub. (4).

4           (4) Unless otherwise expressly provided in the electronic record or agreed  
5 between the sender and the recipient, an electronic record is deemed to be sent from  
6 the sender's place of business and to be received at the recipient's place of business.

7 For purposes of this subsection:

8           (a) If the sender or recipient has more than one place of business, the place of  
9 business of that person is the place having the closest relationship to the underlying  
10 transaction.

11           (b) If the sender or the recipient does not have a place of business, the place of  
12 business is the sender's or recipient's residence, as the case may be.

13           (5) An electronic record is received under sub. (2) even if no individual is aware  
14 of its receipt.

15           (6) Receipt of an electronic acknowledgment from an information processing  
16 system described in sub. (2) establishes that a record was received but, by itself, does  
17 not establish that the content sent corresponds to the content received.

18           (7) If a person is aware that an electronic record purportedly sent under sub.  
19 (1), or purportedly received under sub. (2), was not actually sent or received, the legal  
20 effect of the sending or receipt is determined by other applicable law. Except to the  
21 extent permitted by the other law, the requirements of this subsection may not be  
22 varied by agreement.

23           **137.24 Transferable records.** (1) In this section, "transferable record"  
24 means an electronic record that would be a note under ch. 403 or a document under  
25 ch. 407 if the electronic record were in writing.

1           **(1m)** An electronic record qualifies as a transferable record under this section  
2 only if the issuer of the electronic record expressly has agreed that the electronic  
3 record is a transferable record.

4           **(2)** A person has control of a transferable record if a system employed for  
5 evidencing the transfer of interests in the transferable record reliably establishes  
6 that person as the person to which the transferable record was issued or transferred.

7           **(3)** A system satisfies the requirements of sub. (2), and a person is deemed to  
8 have control of a transferable record, if the transferable record is created, stored, and  
9 assigned in such a manner that:

10           (a) A single authoritative copy of the transferable record exists which is unique,  
11 identifiable, and, except as otherwise provided in pars. (d) to (f), unalterable;

12           (b) The authoritative copy identifies the person asserting control as the person  
13 to which the transferable record was issued or, if the authoritative copy indicates  
14 that the transferable record has been transferred, the person to which the  
15 transferable record was most recently transferred;

16           (c) The authoritative copy is communicated to and maintained by the person  
17 asserting control or its designated custodian;

18           (d) Copies or revisions that add or change an identified assignee of the  
19 authoritative copy can be made only with the consent of the person asserting control;

20           (e) Each copy of the authoritative copy and any copy of a copy is readily  
21 identifiable as a copy that is not the authoritative copy; and

22           (f) Any revision of the authoritative copy is readily identifiable as authorized  
23 or unauthorized.

24           **(4)** Except as otherwise agreed, a person having control of a transferable record  
25 is the holder, as defined in s. 401.201 (20), of the transferable record and has the same

1 rights and defenses as a holder of an equivalent record or writing under chs. 401 to  
2 411, including, if the applicable statutory requirements under s. 403.302 (1),  
3 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,  
4 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,  
5 respectively. Delivery, possession, and endorsement are not required to obtain or  
6 exercise any of the rights under this subsection.

7 (5) Except as otherwise agreed, an obligor under a transferable record has the  
8 same rights and defenses as an equivalent obligor under equivalent records or  
9 writings under chs. 401 to 411.

10 (6) If requested by a person against which enforcement is sought, the person  
11 seeking to enforce the transferable record shall provide reasonable proof that the  
12 person is in control of the transferable record. Proof may include access to the  
13 authoritative copy of the transferable record and related business records sufficient  
14 to review the terms of the transferable record and to establish the identity of the  
15 person having control of the transferable record.

16 **SECTION 25.** 137.25 (2) of the statutes is created to read:

17 137.25 (2) The department of electronic government shall promulgate rules  
18 concerning the use of electronic records and electronic signatures by governmental  
19 units, which shall govern the use of electronic records or signatures by governmental  
20 units, unless otherwise provided by law. The rules shall include standards regarding  
21 the receipt of electronic records or electronic signatures that promote consistency  
22 and interoperability with other standards adopted by other governmental units of  
23 this state and other states and the federal government and nongovernmental  
24 persons interacting with governmental units of this state. The standards may  
25 include alternative provisions if warranted to meet particular applications.



INSERT 39-9 ✓

1       **SECTION 26.** 146.82 (2) (a) (intro.) of the statutes is amended to read:

2       146.82 (2) (a) (intro.) ~~Notwithstanding~~ It is not a violation of sub. (1), to release  
3       patient health care records ~~shall be released upon request~~ without informed consent  
4       in the following circumstances:

5       **SECTION 27.** 146.82 (2) (a) 22. of the statutes is created to read:

6       146.82 (2) (a) 22. For purposes of health care operations, as defined in 45 CFR  
7       164.501, and as authorized under 45 CFR 164, subpart E.

8       **SECTION 28.** 196.03 (7) of the statutes is created to read:

9       196.03 (7) ~~The commission may allow a public utility that provides gas or~~  
10       ~~electricity to the public to recover in rates charged to consumers the costs of~~  
11       ~~promoting economic development, including infrastructure deployment necessary~~  
12       ~~for providing gas or electricity to the public.~~

13       **SECTION 29.** 196.195 (5m) of the statutes is created to read:

14       196.195 (5m) TIME LIMITATION ON COMMISSION ACTION. (a) No later than 120 days  
15       after the filing of a petition under sub. (2) (a), the commission shall complete the  
16       proceedings under subs. (2), (3), and (4), and, if appropriate, enter an order under  
17       sub. (5). If the commission fails to complete the proceedings and, if appropriate, enter  
18       an order before that deadline, the petition is considered to be granted without  
19       condition by the commission and any provisions of law under sub. (5) that are  
20       specified in the petition are considered to be suspended by the commission.

21       (b) No later than 120 days after the commission provides notice of its own  
22       motion under sub. (2) (a), the commission shall complete the proceedings under subs.  
23       (2), (3), and (4), and, if appropriate, enter an order under sub. (5). If the commission  
24       fails to complete the proceedings and, if appropriate, enter an order before that  
25       deadline, the motion is considered to be granted without condition by the commission

1 and any provisions of law under sub. (5) that are specified in the motion are  
2 considered to be suspended by the commission.

3 **SECTION 30.** 196.195 (10) of the statutes is amended to read:

4 196.195 (10) REVOCATION OF DEREGULATION. If necessary to protect the public  
5 interest, the commission, at any time by order, may revoke its order to suspend the  
6 applicability of any provision of law suspended under sub. (5). This subsection does  
7 not apply to any provision of law that is considered to be suspended under sub. (5m).

8 **SECTION 31.** 196.374 (3) of the statutes is amended to read:

9 196.374 (3) In 2000, 2001 and 2002, the commission shall require each utility  
10 to spend a decreasing portion of the amount determined under sub. (2) on programs  
11 specified in sub. (2) and contribute the remaining portion of the amount to the  
12 commission for deposit in the fund. ~~In~~ Except as provided in sub. (3m), in each year  
13 after 2002, each utility shall contribute the entire amount determined under sub. (2)  
14 to the commission for deposit in the fund. The commission shall ensure in  
15 rate-making orders that a utility recovers from its ratepayers the amounts spent on  
16 programs or contributed to the fund under this subsection or retained under sub.  
17 (3m). The commission shall allow each utility the option of continuing to use, until  
18 January 1, 2002, the moneys that it has recovered under s. 196.374 (3), 1997 stats.,  
19 to administer the programs that it has funded under s. 196.374 (1), 1997 stats. The  
20 commission may allow each utility to spend additional moneys on the programs  
21 specified in sub. (2) if the utility otherwise complies with the requirements of this  
22 section and s. 16.957 (4).

23 **SECTION 32.** 196.374 (3m) of the statutes is created to read:

24 196.374 (3m) (a) In each fiscal year, the commission may allow a utility to  
25 retain a portion of the amount determined under sub. (2) instead of contributing the

1 entire amount to the commission, if the commission determines that the portion is  
2 used by the utility for energy conservation programs for industrial, commercial, and  
3 agricultural customers in the utility's service area and that the programs comply  
4 with rules promulgated by the commission. The rules shall specify annual energy  
5 savings targets that the programs must be designed to achieve. The rules shall also  
6 require a utility to demonstrate that, no later than a reasonable period of time, as  
7 determined by the commission, after the utility implements a program, the economic  
8 value of the benefits resulting from the program will be equal to the portion that the  
9 utility is allowed to retain under this paragraph.

10 **SECTION 33.** 196.491 (1) (d) of the statutes is amended to read:

11 196.491 (1) (d) "Electric utility" means any public utility, as defined in s.  
12 196.01, which is involved in the generation, distribution and sale of electric energy,  
13 and any corporation, company, individual or association, and any cooperative  
14 association, which owns or operates, or plans within the next 3 7 years to construct,  
15 own or operate, facilities in the state.

16 **SECTION 34.** 196.491 (2) (a) 3. of the statutes is amended to read:

17 196.491 (2) (a) 3. Identify and describe large electric generating facilities on  
18 which an electric utility plans to commence construction within 3 7 years.

19 **SECTION 35.** 196.491 (2) (a) 3m. of the statutes is amended to read:

20 196.491 (2) (a) 3m. Identify and describe high-voltage transmission lines on  
21 which an electric utility plans to commence construction within 3 7 years.

22 **SECTION 36.** 196.491 (2) (g) of the statutes is amended to read:

23 196.491 (2) (g) No sooner than 30 and no later than 90 days after copies of the  
24 draft are issued under par. (b), the commission shall hold a hearing on the draft  
25 which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in

1 an administrative district, established by executive order 22, issued  
2 August 24, 1970, which the commission determines will be significantly affected by  
3 facilities on which an electric utility plans to commence construction within 3 7  
4 years. The commission may thereafter adjourn the hearing to other locations or may  
5 conduct the hearing by interactive video conference or other electronic method.  
6 Notice of such hearing shall be given by class 1 notice, under ch. 985, published in  
7 the official state newspaper and such other regional papers of general circulation as  
8 may be designated by the commission. At such hearing the commission shall briefly  
9 describe the strategic energy assessment and give all interested persons an  
10 opportunity, subject to reasonable limitations on the presentation of repetitious  
11 material, to express their views on any aspect of the strategic energy assessment.  
12 A record of the hearing shall be made and considered by the commission as comments  
13 on the strategic energy assessment under par. (e).

14 **SECTION 37.** 196.491 (3) (a) 3. a. of the statutes is amended to read:

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

25 **SECTION 38.** 196.491 (3) (e) of the statutes is amended to read:

1           196.491 (3) (e) If the application does not meet the criteria under par. (d), the  
2           commission shall reject the application or approve the application with such  
3           modifications as are necessary for an affirmative finding under par. (d). The  
4           commission may not issue a certificate of public convenience and necessity for a large  
5           electric generating facility until the department has issued all permits and  
6           approvals identified in the listing specified in par. (a) 3. a. that are required prior to  
7           construction.

8           **SECTION 39.** 196.491 (3) (g) 1. of the statutes is renumbered 196.491 (3) (g).

9           **SECTION 40.** 196.491 (3) (g) 1m. of the statutes is repealed.

10          **SECTION 41.** 221.0901 (3) (a) 1. of the statutes is amended to read:

11          221.0901 (3) (a) 1. Merge or consolidate with an in-state bank holding company  
12          or in-state bank.

13          **SECTION 42.** 221.0901 (8) (a) and (b) of the statutes are amended to read:

14          221.0901 (8) (a) Except as provided in pars. (b) and (c), the division may not  
15          approve an application ~~by an out-of-state bank holding company~~ under sub. (3) (a),  
16          other than an application by an in-state bank holding company or in-state bank,  
17          unless the in-state bank to be acquired, or all in-state bank subsidiaries of the  
18          in-state bank holding company to be acquired, have as of the proposed date of  
19          acquisition been in existence and in continuous operation for at least 5 years.

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

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

3 SECTION 43. 224.30 (2) of the statutes is repealed.

4 SECTION 44. 241.02 (3) of the statutes is created to read:

5 241.02 (3) (a) In this subsection:

6 1. “Affiliate” of a bank, savings bank, or savings and loan association means  
7 a business entity that controls, is controlled by, or is under common control with the  
8 bank, savings bank, or savings and loan association.

9 2. “Financial institution” means a bank, savings bank, or savings and loan  
10 association organized under the laws of this state, another state, or the United States  
11 and any affiliate of such a bank, savings bank, or savings and loan association.

12 (b) Except as provided in par. (d), no action may be commenced against a  
13 financial institution on or in connection with any of the following promises or  
14 commitments of the financial institution unless the promise or commitment is in  
15 writing, sets forth relevant terms and conditions, and is signed by the financial  
16 institution:

17 1. A promise or commitment to lend money, grant or extend credit, or make any  
18 other financial accommodation.

19 2. A promise or commitment to renew, extend, modify, or permit a delay in  
20 repayment or performance of a loan, extension of credit, or other financial  
21 accommodation.

22 (c) Except as provided in par. (d), a promise or commitment by a financial  
23 institution described in par. (b) may not be enforced under the doctrine of promissory  
24 estoppel.

1 (d) Paragraphs (b) and (c) do not apply to credit transactions that are subject  
2 to chs. 421 to 427.

3 **SECTION 45.** 295.13 (4) of the statutes is created to read:

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

11 **SECTION 46.** 452.05 (3) of the statutes is created to read:

12 452.05 (3) The department may, after consultation with the board, enter into  
13 reciprocal agreements with officials of other states or territories of the United States  
14 for licensing brokers and salespersons and grant licenses to applicants who are  
15 licensed as brokers or salespersons in those states or territories according to the  
16 terms of the reciprocal agreements.

17 **SECTION 47.** 452.09 (2) (a) of the statutes is amended to read:

18 452.09 (2) (a) ~~Each~~ Except as provided in a reciprocal agreement under s.  
19 452.05 (3), each applicant for a salesperson's license shall submit to the department  
20 evidence satisfactory to the department of successful completion of educational  
21 programs approved for this purpose under s. 452.05 (1) (c). The department may  
22 waive the requirement under this paragraph upon proof that the applicant has  
23 received 10 academic credits in real estate or real estate related law courses from an  
24 accredited institution of higher education.

25 **SECTION 48.** 452.09 (2) (c) (intro.) of the statutes is amended to read:

1           452.09 (2) (c) (intro.) Except as provided in par. (d) or a reciprocal agreement  
2 under s. 452.05 (3), each applicant for a broker's license shall do all of the following:

3           **SECTION 49.** 452.09 (3) (d) of the statutes is amended to read:

4           452.09 (3) (d) ~~The~~ Except as provided in a reciprocal agreement under s. 452.05  
5 (3), the department may not grant a broker's license to an applicant who does not  
6 hold a salesperson's license unless the applicant passes the salesperson's  
7 examination and the broker's examination.

8           **SECTION 50.** 889.29 (1) of the statutes is amended to read:

9           889.29 (1) If any business, institution or member of a profession or calling in  
10 the regular course of business or activity has kept or recorded any memorandum,  
11 writing, entry, print, representation or combination thereof, of any act, transaction,  
12 occurrence or event, and in the regular course of business has caused any or all of the  
13 same to be recorded, copied or reproduced by any photographic, photostatic,  
14 microfilm, microcard, miniature photographic, or other process which accurately  
15 reproduces or forms a durable medium for so reproducing the original, or to be  
16 recorded on an optical disk or in electronic format, the original may be destroyed in  
17 the regular course of business, unless its preservation is required by law. Such  
18 reproduction or optical disk record, when reduced to comprehensible format and  
19 when satisfactorily identified, is as admissible in evidence as the original itself in any  
20 judicial or administrative proceeding whether the original is in existence or not and  
21 an enlargement or facsimile of such reproduction of a record or an enlarged copy of  
22 a record generated from an original record stored in optical disk or electronic format  
23 is likewise admissible in evidence if the original reproduction is in existence and  
24 available for inspection under direction of court. The introduction of a reproduced