

1 record, enlargement or facsimile, does not preclude admission of the original. This  
2 subsection does not apply to records governed by s. 137.20.

3 **SECTION 51.** 910.01 (1) of the statutes is amended to read:

4 910.01 (1) WRITINGS AND RECORDINGS. “Writings” and “recordings” consist of  
5 letters, words or numbers, or their equivalent, set down by handwriting, typewriting,  
6 printing, photostating, photographing, magnetic impulse, mechanical or electronic  
7 recording, or other form of data compilation or recording.

8 **SECTION 52.** 910.02 of the statutes is amended to read:

9 **910.02 Requirement of original.** To prove the content of a writing, recording  
10 or photograph, the original writing, recording or photograph is required, except as  
11 otherwise provided in chs. 901 to 911, in s. 137.21, or by other statute.

12 **SECTION 53.** 910.03 of the statutes is amended to read:

13 **910.03 Admissibility of duplicates.** A duplicate is admissible to the same  
14 extent as an original unless (1) a genuine question is raised as to the authenticity of  
15 the original or (2) in the circumstances it would be unfair to admit the duplicate in  
16 lieu of the original. This section does not apply to records of transactions governed  
17 by s. 137.21.

18 **SECTION 54. Nonstatutory provisions.**

19 (1) USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES BY GOVERNMENTAL  
20 UNITS; EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,  
21 the department of electronic government may promulgate emergency rules under  
22 section 137.25 (2) of the statutes, as created by this act, for the period before the  
23 effective date of permanent rules initially promulgated under section 137.25 (2) of  
24 the statutes, as created by this act, but not to exceed the period authorized under  
25 section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a),

1 (2) (b), and (3) of the statutes, the department is not required to provide evidence that  
2 promulgating a rule under this subsection as an emergency rule is necessary for the  
3 preservation of the public peace, health, safety, or welfare and is not required to  
4 provide a finding of emergency for a rule promulgated under this subsection.

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

16 (3) USE OF ELECTRONIC SIGNATURES BY NOTARIES PUBLIC; PERMANENT RULES. The  
17 secretary of state and department of electronic government shall initially  
18 promulgate permanent rules under section 137.01 (4) (a) of the statutes, as affected  
19 by this act, to become effective no later than January 1, 2004.

20 (4) ENERGY CONSERVATION AND EFFICIENCY GRANTS; EMERGENCY RULES. Using the  
21 procedure under section 227.24 of the statutes, the public service commission shall  
22 promulgate as emergency rules the rules required under section 16.957 (2m) of the  
23 statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the  
24 statutes, the emergency rules promulgated under this subsection may remain in  
25 effect until the date on which the permanent rules required under section 16.957

1 (2m) of the statutes, as created by this act, take effect. Notwithstanding section  
2 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not  
3 required to provide evidence that promulgating rules under this subsection as  
4 emergency rules is necessary for the preservation of the public peace, health, safety,  
5 or welfare and is not required to provide a finding of emergency for the rules  
6 promulgated under this subsection.

7 **SECTION 55. Initial applicability.**

8 (1) **LAWSUITS CONCERNING CREDIT AGREEMENTS AND RELATED DOCUMENTS.** The  
9 treatment of section 241.02 (3) of the statutes first applies to actions commenced on  
10 the effective date of this subsection.

11 (2) **PARTIAL DEREGULATION OF TELECOMMUNICATIONS.** The treatment of section  
12 196.195 (5m) and (10) of the statutes first applies to proceedings initiated by  
13 petitions filed with the public service commission, or by notices made on the public  
14 service commission's own motion, on the effective date of this subsection.

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

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

21 (5) **ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES.** The treatment of sections  
22 137.01 (3) (a) and (4) (a) and (b), 137.04, 137.05 (title), 137.06, 137.11 to 137.24,  
23 137.25 (2), 224.30 (2), 889.29 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title)  
24 and II (title) of chapter 137, and chapter 137 (title) of the statutes and the  
25 renumbering and amendment of section 137.05 of the statutes first apply to

1 electronic records or electronic signatures that are created, generated, sent,  
2 communicated, received, or initially stored on the effective date of this subsection.

3 (6) ENERGY CONSERVATION AND EFFICIENCY GRANTS. The treatment of section  
4 16.957 (2) (b) 1. (intro.) of the statutes first applies to grants that are awarded on the  
5 effective date of the rules promulgated under SECTION 54 (4) of this act.

6 **SECTION 56. Effective date.**

7 (1) ENERGY CONSERVATION AND EFFICIENCY GRANTS. The treatment of section  
8 16.957 (2) (b) 1. (intro.) and (c) 2., (2m), and (3) (b) of the statutes takes effect on July  
9 1, 2005.

10 (2) SALES TAX EXEMPTION FOR TEMPORARY SERVICES. The treatment of section  
11 77.52 (2r) of the statutes takes effect on the first day of the 2nd month beginning after  
12 publication.

13 (END)

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**INSERT 4A:** ✓

Current law requires gas and electric utilities, like other public utilities, such as telecommunications utilities, to provide reasonably adequate service and to charge rates for service that are reasonable and just. In determining a reasonably adequate telecommunications service or a reasonable and just charge for telecommunications service, current law requires the PSC to consider certain costs incurred by a telecommunications utility, including costs promoting economic development, including telecommunications infrastructure deployment.

This bill requires the PSC to consider similar costs in determining whether the service of a gas or electric utility is reasonably adequate, or whether charges for such service are reasonable and just. Specifically, the bill requires the PSC to consider costs incurred by a gas or electric utility for economic development activities that support and promote customer service load retention and load growth.

**INSERT 39-9:** ✓

*NA 8*

In determining a reasonably adequate public utility gas or electric service or a reasonable and just charge for such 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.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3380/P5  
RT/MK/MS/GM/RM:kjf&kg:ch

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1       **AN ACT to repeal** 137.04, 137.06, 196.491 (3) (g) 1m. and 224.30 (2); **to renumber**  
2           196.491 (3) (g) 1.; **to renumber and amend** 137.05 (title) and 137.05; **to**  
3           **amend** 16.957 (2) (b) 1. (intro.), 16.957 (2) (c) 2., 16.957 (3) (b), 25.96, 66.1001  
4           (2) (e), 66.1001 (4) (a), 106.01 (9), 106.025 (4), chapter 137 (title), subchapter I  
5           (title) of chapter 137 [precedes 137.01], 137.01 (3) (a), 137.01 (4) (a), 137.01 (4)  
6           (b), subchapter II (title) of chapter 137 [precedes 137.04], 146.82 (2) (a) (intro.),  
7           196.195 (10), 196.374 (3), 196.491 (1) (d), 196.491 (2) (a) 3., 196.491 (2) (a) 3m.,  
8           196.491 (2) (g), 196.491 (3) (a) 3. a., 196.491 (3) (e), 221.0901 (3) (a) 1., 221.0901  
9           (8) (a) and (b), 452.09 (2) (a), 452.09 (2) (c) (intro.), 452.09 (3) (d), 889.29 (1),  
10          910.01 (1), 910.02 and 910.03; and **to create** 16.957 (2m), 66.0628, 66.1001 (4)  
11          (e), 77.52 (2r), 106.04, 137.11 to 137.24, 137.25 (2), 146.82 (2) (a) 22., 196.03 (7),  
12          196.195 (5m), 196.374 (3m), 241.02 (3), 295.13 (4) and 452.05 (3) of the statutes;  
13          **relating to:** administrative rule-making procedures, the control of air  
14          pollution, the protection of navigable waters, nonmetallic mining reclamation  
15          financial assurances, the regulation of electric generating facilities and

1 high-voltage transmission lines, partial deregulation of telecommunications  
2 services, contributions by electric and gas utilities to the utility public benefits  
3 fund, grants for energy conservation and other programs, electric and gas  
4 utility service and rates, reciprocal agreements for real estate licenses,  
5 comprehensive planning by local governmental units, fees imposed by political  
6 subdivisions, the confidentiality of patient health care records,  
7 apprentice-to-journeyman job-site ratios, the acquisition of in-state banks  
8 and in-state bank holding companies, credits agreements, electronic  
9 notarization and acknowledgement, electronic transactions and records, a  
10 sales tax exemption for temporary help services, extending the time limit for  
11 emergency rule procedures, and granting rule-making authority.

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*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, economic development costs of 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.

#### **ECONOMIC DEVELOPMENT COSTS OF ELECTRIC AND GAS UTILITIES**

Under current law, the PSC regulates rates charged to consumers by gas and electric utilities. Current law requires gas and electric utilities, like other public utilities, such as telecommunications utilities, to provide reasonably adequate service and to charge rates for service that are reasonable and just. In determining a reasonably adequate telecommunications service or a reasonable and just charge for telecommunications service, current law requires the PSC to consider certain costs incurred by a telecommunications utility, including costs promoting economic development, including telecommunications infrastructure deployment.

This bill requires the PSC to consider similar costs in determining whether the service of a gas or electric utility is reasonably adequate, or whether charges for such service are reasonable and just. Specifically, the bill requires the PSC to consider costs incurred by a gas or electric utility for economic development activities that support and promote customer service load retention and load growth.

#### **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.

#### **FEEES 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 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.

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*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

1 the applicant demonstrates that, no later than a reasonable period of time, as  
2 determined by the commission, after the applicant begins to implement the proposal,  
3 the economic value of the benefits resulting from the proposal will be equal to the  
4 amount of the grant. The rules shall also specify annual energy savings targets that  
5 a such proposal must be designed to achieve in order for the proposal to be eligible  
6 for a grant under sub. (2) (b).

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

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

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

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

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

22 **66.0628 Fees imposed by a political subdivision.** (1) In this section,  
23 “political subdivision” means a city, village, town, or county.

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



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

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

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

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

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

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

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

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

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

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

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

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

18 77.52 (2r) No part of the charge for services provided by a temporary help  
19 company, as defined in s. 108.02 (24m), is subject to tax under sub. (2), if the client  
20 for whom the services are provided controls the means of performing the services and  
21 is responsible for the satisfactory completion of the services.

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

23 106.01 (9) The Subject to s. 106.04, the department may investigate, fix  
24 reasonable classifications, issue promulgate rules and, issue general or special  
25 orders, and, hold hearings, make findings, and render orders upon its findings as

1 shall be necessary to carry out the intent and purposes of this section. The  
2 investigations, classifications, hearings, findings, and orders shall be made as  
3 provided in s. 103.005. Except as provided in sub. (8), the penalties specified in s.  
4 103.005 (12) apply to violations of this section. Orders issued under this subsection  
5 are subject to review under ch. 227.

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

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

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

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

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

22 **CHAPTER 137**

23 **AUTHENTICATIONS AND ELECTRONIC**

24 **TRANSACTIONS AND RECORDS**

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

3                                   **CHAPTER 137**  
4                                   **SUBCHAPTER I**  
5                                   **NOTARIES AND COMMISSIONERS**  
6                                   **OF DEEDS; ELECTRONIC AND**  
7                                   **NONELECTRONIC NOTARIZATION AND**  
8                                   **ACKNOWLEDGEMENT**

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

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

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

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

1 under s. 137.19. All joint rules promulgated under this paragraph shall be numbered  
2 as rules of each agency in the Wisconsin Administrative Code.

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

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

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

13 **CHAPTER 137**

14 **SUBCHAPTER II**

15 **ELECTRONIC SIGNATURES**

16 **TRANSACTIONS AND RECORDS;**

17 **ELECTRONIC NOTARIZATION**

18 **AND ACKNOWLEDGEMENT**

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

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

22 **137.25 (title) Submission of written documents records to**  
23 **governmental units; interoperability.**

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

1           137.25 (1) Unless otherwise ~~prohibited~~ provided by law, with the consent of a  
2 governmental unit of this state that is to receive a record, any document record that  
3 is required by law to be submitted in writing to ~~a~~ that governmental unit and that  
4 requires a written signature may be submitted ~~by transforming the document into~~  
5 as an electronic format, but only with the consent of the governmental unit that is  
6 to receive the document record, and if submitted as an electronic record may  
7 incorporate an electronic signature.

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

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

10          **137.11 Definitions.** In this subchapter:

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

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

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

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

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

3           (6) “Electronic agent” means a computer program or an electronic or other  
4 automated means used independently to initiate an action or respond to electronic  
5 records or performances in whole or in part, without review or action by an  
6 individual.

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

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

12           (9) “Governmental unit” means:

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

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

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

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

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

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

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

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

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

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

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

19           **137.115 Relation to federal law.** For the purpose of satisfying 15 USC 7002  
20 (a) (2) (B) as that statute relates to this subchapter, this state acknowledges the  
21 existence of the Electronic Signatures in Global and National Commerce Act, 15 USC  
22 7001 to 7031.

23           **137.12 Application.** (1) Except as otherwise provided in subs. (2) and (2m)  
24 and except in s. 137.25, this subchapter applies to electronic records and electronic  
25 signatures relating to a transaction.



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

3           (a) Any law governing the execution of wills or the creation of testamentary  
4 trusts; or

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

6           (2m) This subchapter does not apply to any of the following records or any  
7 transaction evidenced by any of the following records:

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

10          (b) Notices provided by a court.

11          (c) Court orders or judgements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           **137.14 Construction.** This subchapter shall be construed and applied:

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

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

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

8           **137.15 Legal recognition of electronic records, electronic signatures,**  
9 **and electronic contracts.** (1) A record or signature may not be denied legal effect  
10 or enforceability solely because it is in electronic form.

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

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

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

17           **137.16 Provision of information in writing; presentation of records.**

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

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

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

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

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

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

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

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

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

21           **137.17 Attribution and effect of electronic records and electronic**  
22 **signatures.** (1) An electronic record or electronic signature is attributable to a  
23 person if the electronic record or electronic signature was created by the act of the  
24 person. The act of the person may be shown in any manner, including a showing of

1 the efficacy of any security procedure applied to determine the person to which the  
2 electronic record or electronic signature was attributable.

3 (2) The effect of an electronic record or electronic signature that is attributed  
4 to a person under sub. (1) is determined from the context and surrounding  
5 circumstances at the time of its creation, execution, or adoption, including the  
6 parties' agreement, if any, and otherwise as provided by law.

7 **137.18 Effect of change or error.** (1) If a change or error in an electronic  
8 record occurs in a transmission between parties to a transaction, then:

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

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

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

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

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

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

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

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

13           **137.20 Retention of electronic records; originals.** (1) Except as provided  
14 in sub. (6), if a law requires that a record be retained, the requirement is satisfied  
15 by retaining the information set forth in the record as an electronic record which:

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

18           (b) Remains accessible for later reference.

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

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

24           (4) Except as provided in sub. (6), if a law requires a record to be presented or  
25 retained in its original form, or provides consequences if the record is not presented

1 or retained in its original form, a person may comply with that law by using an  
2 electronic record that is retained in accordance with sub. (1).

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

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

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

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

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

24 **137.21 Admissibility in evidence.** In a proceeding, a record or signature  
25 may not be excluded as evidence solely because it is in electronic form.

1           **137.22 Automated transactions.** In an automated transaction:

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

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

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

12           **137.23 Time and place of sending and receipt.** (1) Unless otherwise  
13 agreed between the sender and the recipient, an electronic record is sent when it:

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

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

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

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



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

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

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

9 (4) Unless otherwise expressly provided in the electronic record or agreed  
10 between the sender and the recipient, an electronic record is deemed to be sent from  
11 the sender's place of business and to be received at the recipient's place of business.  
12 For purposes of this subsection:

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

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

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

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

23 (7) If a person is aware that an electronic record purportedly sent under sub.  
24 (1), or purportedly received under sub. (2), was not actually sent or received, the legal  
25 effect of the sending or receipt is determined by other applicable law. Except to the

1 extent permitted by the other law, the requirements of this subsection may not be  
2 varied by agreement.

3 **137.24 Transferable records.** (1) In this section, “transferable record”  
4 means an electronic record that would be a note under ch. 403 or a document under  
5 ch. 407 if the electronic record were in writing.

6 (1m) An electronic record qualifies as a transferable record under this section  
7 only if the issuer of the electronic record expressly has agreed that the electronic  
8 record is a transferable record.

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

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

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

17 (b) The authoritative copy identifies the person asserting control as the person  
18 to which the transferable record was issued or, if the authoritative copy indicates  
19 that the transferable record has been transferred, the person to which the  
20 transferable record was most recently transferred;

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

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

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

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

5 (4) Except as otherwise agreed, a person having control of a transferable record  
6 is the holder, as defined in s. 401.201 (20), of the transferable record and has the same  
7 rights and defenses as a holder of an equivalent record or writing under chs. 401 to  
8 411, including, if the applicable statutory requirements under s. 403.302 (1),  
9 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,  
10 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,  
11 respectively. Delivery, possession, and endorsement are not required to obtain or  
12 exercise any of the rights under this subsection.

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

16 (6) If requested by a person against which enforcement is sought, the person  
17 seeking to enforce the transferable record shall provide reasonable proof that the  
18 person is in control of the transferable record. Proof may include access to the  
19 authoritative copy of the transferable record and related business records sufficient  
20 to review the terms of the transferable record and to establish the identity of the  
21 person having control of the transferable record.

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

23 137.25 (2) The department of electronic government shall promulgate rules  
24 concerning the use of electronic records and electronic signatures by governmental  
25 units, which shall govern the use of electronic records or signatures by governmental

1 units, unless otherwise provided by law. The rules shall include standards regarding  
2 the receipt of electronic records or electronic signatures that promote consistency  
3 and interoperability with other standards adopted by other governmental units of  
4 this state and other states and the federal government and nongovernmental  
5 persons interacting with governmental units of this state. The standards may  
6 include alternative provisions if warranted to meet particular applications.

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

8 146.82 (2) (a) (intro.) Notwithstanding It is not a violation of sub. (1), to release  
9 ~~patient health care records shall be released upon request without informed consent~~  
10 in the following circumstances:

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

12 146.82 (2) (a) 22. For purposes of health care operations, as defined in 45 CFR  
13 164.501, and as authorized under 45 CFR 164, subpart E.

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

15 196.03 (7) In determining a reasonably adequate public utility gas or electric  
16 service or a reasonable and just charge for such service, the commission shall  
17 consider costs incurred by the public utility for economic development activities that  
18 support and promote customer service load retention and load growth in determining  
19 what is reasonable and just, reasonably adequate, convenient and necessary, or in  
20 the public interest.

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

22 196.195 (5m) **TIME LIMITATION ON COMMISSION ACTION.** (a) No later than 120 days  
23 after the filing of a petition under sub. (2) (a), the commission shall complete the  
24 proceedings under subs. (2), (3), and (4), and, if appropriate, enter an order under  
25 sub. (5). If the commission fails to complete the proceedings and, if appropriate, enter

1 an order before that deadline, the petition is considered to be granted without  
2 condition by the commission and any provisions of law under sub. (5) that are  
3 specified in the petition are considered to be suspended by the commission.

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

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

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

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

17 196.374 (3) In 2000, 2001 and 2002, the commission shall require each utility  
18 to spend a decreasing portion of the amount determined under sub. (2) on programs  
19 specified in sub. (2) and contribute the remaining portion of the amount to the  
20 commission for deposit in the fund. ~~In~~ Except as provided in sub. (3m), in each year  
21 after 2002, each utility shall contribute the entire amount determined under sub. (2)  
22 to the commission for deposit in the fund. The commission shall ensure in  
23 rate-making orders that a utility recovers from its ratepayers the amounts spent on  
24 programs or contributed to the fund under this subsection or retained under sub.  
25 (3m). The commission shall allow each utility the option of continuing to use, until

1 January 1, 2002, the moneys that it has recovered under s. 196.374 (3), 1997 stats.,  
2 to administer the programs that it has funded under s. 196.374 (1), 1997 stats. The  
3 commission may allow each utility to spend additional moneys on the programs  
4 specified in sub. (2) if the utility otherwise complies with the requirements of this  
5 section and s. 16.957 (4).

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

7 196.374 (3m) (a) In each fiscal year, the commission may allow a utility to  
8 retain a portion of the amount determined under sub. (2) instead of contributing the  
9 entire amount to the commission, if the commission determines that the portion is  
10 used by the utility for energy conservation programs for industrial, commercial, and  
11 agricultural customers in the utility's service area and that the programs comply  
12 with rules promulgated by the commission. The rules shall specify annual energy  
13 savings targets that the programs must be designed to achieve. The rules shall also  
14 require a utility to demonstrate that, no later than a reasonable period of time, as  
15 determined by the commission, after the utility implements a program, the economic  
16 value of the benefits resulting from the program will be equal to the portion that the  
17 utility is allowed to retain under this paragraph.

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

19 196.491 (1) (d) "Electric utility" means any public utility, as defined in s.  
20 196.01, which is involved in the generation, distribution and sale of electric energy,  
21 and any corporation, company, individual or association, and any cooperative  
22 association, which owns or operates, or plans within the next 3 7 years to construct,  
23 own or operate, facilities in the state.

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

1           196.491 (2) (a) 3. Identify and describe large electric generating facilities on  
2           which an electric utility plans to commence construction within 3 7 years.

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

4           196.491 (2) (a) 3m. Identify and describe high-voltage transmission lines on  
5           which an electric utility plans to commence construction within 3 7 years.

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

7           196.491 (2) (g) No sooner than 30 and no later than 90 days after copies of the  
8           draft are issued under par. (b), the commission shall hold a hearing on the draft  
9           which may not be a hearing under s. 227.42 or 227.44. The hearing shall be held in  
10          an administrative district, established by executive order 22, issued  
11          August 24, 1970, which the commission determines will be significantly affected by  
12          facilities on which an electric utility plans to commence construction within 3 7  
13          years. The commission may thereafter adjourn the hearing to other locations or may  
14          conduct the hearing by interactive video conference or other electronic method.  
15          Notice of such hearing shall be given by class 1 notice, under ch. 985, published in  
16          the official state newspaper and such other regional papers of general circulation as  
17          may be designated by the commission. At such hearing the commission shall briefly  
18          describe the strategic energy assessment and give all interested persons an  
19          opportunity, subject to reasonable limitations on the presentation of repetitious  
20          material, to express their views on any aspect of the strategic energy assessment.  
21          A record of the hearing shall be made and considered by the commission as comments  
22          on the strategic energy assessment under par. (e).

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

24          196.491 (3) (a) 3. a. At least 60 days before a person files an application for a  
25          large electric generating facility under subd. 1., the person shall provide the

1 department with an engineering plan showing the location of the facility, a  
2 description of the facility, including the major components of the facility that have  
3 a significant air, water or solid waste pollution potential, and a description of the  
4 anticipated effects of the facility on air and water quality. Within 30 days after a  
5 person provides an engineering plan, the department shall provide the person with  
6 a listing of each department permit or approval which, on the basis of the information  
7 contained in the engineering plan, appears to be required for the construction or  
8 operation of the large electric generating facility.

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

10 196.491 (3) (e) If the application does not meet the criteria under par. (d), the  
11 commission shall reject the application or approve the application with such  
12 modifications as are necessary for an affirmative finding under par. (d). The  
13 commission may not issue a certificate of public convenience and necessity for a large  
14 electric generating facility until the department has issued all permits and  
15 approvals identified in the listing specified in par. (a) 3. a. that are required prior to  
16 construction.

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

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

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

20 221.0901 (3) (a) 1. Merge or consolidate with an in-state bank holding company  
21 or in-state bank.

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

23 221.0901 (8) (a) Except as provided in pars. (b) and (c), the division may not  
24 approve an application ~~by an out-of-state bank holding company~~ under sub. (3) (a),  
25 other than an application by an in-state bank holding company or in-state bank.



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

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

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

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

14 241.02 (3) (a) In this subsection:

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

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

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

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

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

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

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

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

12           295.13 (4) CREDITING OF FINANCIAL ASSURANCE. If a nonmetallic mining site is  
13 subject to a county ordinance under sub. (1) or (2) and the city, village, or town in  
14 which a nonmetallic mining site is located required the operator of the mining site  
15 to provide financial assurance for nonmetallic mining reclamation of the nonmetallic  
16 mining site, the county shall credit the value of the financial assurance provided to  
17 the city, village, or town against the amount of financial assurance that the operator  
18 is required to provide under the county ordinance.

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

20           452.05 (3) The department may, after consultation with the board, enter into  
21 reciprocal agreements with officials of other states or territories of the United States  
22 for licensing brokers and salespersons and grant licenses to applicants who are  
23 licensed as brokers or salespersons in those states or territories according to the  
24 terms of the reciprocal agreements.

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

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

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

9           452.09 (2) (c) (intro.) ~~Except as provided in par. (d)~~ or a reciprocal agreement  
10 under s. 452.05 (3), each applicant for a broker's license shall do all of the following:

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

12           452.09 (3) (d) ~~The~~ Except as provided in a reciprocal agreement under s. 452.05  
13 (3), the department may not grant a broker's license to an applicant who does not  
14 hold a salesperson's license unless the applicant passes the salesperson's  
15 examination and the broker's examination.

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

17           889.29 (1) If any business, institution or member of a profession or calling in  
18 the regular course of business or activity has kept or recorded any memorandum,  
19 writing, entry, print, representation or combination thereof, of any act, transaction,  
20 occurrence or event, and in the regular course of business has caused any or all of the  
21 same to be recorded, copied or reproduced by any photographic, photostatic,  
22 microfilm, microcard, miniature photographic, or other process which accurately  
23 reproduces or forms a durable medium for so reproducing the original, or to be  
24 recorded on an optical disk or in electronic format, the original may be destroyed in  
25 the regular course of business, unless its preservation is required by law. Such

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

10 **SECTION 51.** 910.01 (1) of the statutes is amended to read:

11 910.01 (1) WRITINGS AND RECORDINGS. “Writings” and “recordings” consist of  
12 letters, words or numbers, or their equivalent, set down by handwriting, typewriting,  
13 printing, photostating, photographing, magnetic impulse, mechanical or electronic  
14 recording, or other form of data compilation or recording.

15 **SECTION 52.** 910.02 of the statutes is amended to read:

16 **910.02 Requirement of original.** To prove the content of a writing, recording  
17 or photograph, the original writing, recording or photograph is required, except as  
18 otherwise provided in chs. 901 to 911, in s. 137.21, or by other statute.

19 **SECTION 53.** 910.03 of the statutes is amended to read:

20 **910.03 Admissibility of duplicates.** A duplicate is admissible to the same  
21 extent as an original unless (1) a genuine question is raised as to the authenticity of  
22 the original or (2) in the circumstances it would be unfair to admit the duplicate in  
23 lieu of the original. This section does not apply to records of transactions governed  
24 by s. 137.21.

25 **SECTION 54. Nonstatutory provisions.**

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

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

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

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

3 (4) ENERGY CONSERVATION AND EFFICIENCY GRANTS; EMERGENCY RULES. Using the  
4 procedure under section 227.24 of the statutes, the public service commission shall  
5 promulgate as emergency rules the rules required under section 16.957 (2m) of the  
6 statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the  
7 statutes, the emergency rules promulgated under this subsection may remain in  
8 effect until the date on which the permanent rules required under section 16.957  
9 (2m) of the statutes, as created by this act, take effect. Notwithstanding section  
10 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not  
11 required to provide evidence that promulgating rules under this subsection as  
12 emergency rules is necessary for the preservation of the public peace, health, safety,  
13 or welfare and is not required to provide a finding of emergency for the rules  
14 promulgated under this subsection.

15 **SECTION 55. Initial applicability.**

16 (1) LAWSUITS CONCERNING CREDIT AGREEMENTS AND RELATED DOCUMENTS. The  
17 treatment of section 241.02 (3) of the statutes first applies to actions commenced on  
18 the effective date of this subsection.

19 (2) PARTIAL DEREGULATION OF TELECOMMUNICATIONS. The treatment of section  
20 196.195 (5m) and (10) of the statutes first applies to proceedings initiated by  
21 petitions filed with the public service commission, or by notices made on the public  
22 service commission's own motion, on the effective date of this subsection.

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

1           (4) CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY INVOLVING OTHER STATES.

2           The treatment of section 196.491 (3) (g) 1. and 1m. of the statutes first applies to  
3           applications filed on the effective date of this subsection.

4           (5) ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES. The treatment of sections  
5           137.01 (3) (a) and (4) (a) and (b), 137.04, 137.05 (title), 137.06, 137.11 to 137.24,  
6           137.25 (2), 224.30 (2), 889.29 (1), 910.01 (1), 910.02, and 910.03, subchapters I (title)  
7           and II (title) of chapter 137, and chapter 137 (title) of the statutes and the  
8           renumbering and amendment of section 137.05 of the statutes first apply to  
9           electronic records or electronic signatures that are created, generated, sent,  
10          communicated, received, or initially stored on the effective date of this subsection.

11          (6) ENERGY CONSERVATION AND EFFICIENCY GRANTS. The treatment of section  
12          16.957 (2) (b) 1. (intro.) of the statutes first applies to grants that are awarded on the  
13          effective date of the rules promulgated under SECTION 54 (4) of this act.

14                **SECTION 56. Effective date.**

15          (1) ENERGY CONSERVATION AND EFFICIENCY GRANTS. The treatment of section  
16          16.957 (2) (b) 1. (intro.) and (c) 2., (2m), and (3) (b) of the statutes takes effect on July  
17          1, 2005.

18          (2) SALES TAX EXEMPTION FOR TEMPORARY SERVICES. The treatment of section  
19          77.52 (2r) of the statutes takes effect on the first day of the 2nd month beginning after  
20          publication.

21

(END)