LRB-3630

2003 DRAFTING REQUEST

Bill

Received: **11/04/2003**

Received By: **gmalaise**

Wanted: **Today**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **Bryon Wornson**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters: **btradewe**
dkennedy
jkreye
mglass
mkunkel
mshovers
rmarchan
rnelson2

Subject: **Administrative Law**
Counties - zoning
Employ Priv - job training
Environment - air quality
Environment - mining
Fin. Inst. - banking inst.
Health - miscellaneous
Munis - zoning
Nat. Res. - boats snomos ATVs
Nat. Res. - nav. waters
Occupational Reg. - prof lic
Public Util. - electric
Public Util. - gas and water
Public Util. - telco
Tax - sales

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gard@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**
joseph.kreye@legis.state.wi.us

Pre Topic:

No specific pre topic given

Jacketed

Topic:

Omnibus regulatory reform

Instructions:

Companion to -3629

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 11/04/2003	kgilfoy 11/04/2003		_____ _____			S&L Tax
/1			pgreensl 11/04/2003	_____ _____	lemery 11/04/2003		S&L
/2	gmalaise 11/07/2003 lemery 11/10/2003	kfollett 11/07/2003	jfrantze 11/07/2003	_____ _____ _____ _____	sbasford 11/07/2003	lemery 11/10/2003	

FE Sent For:

<END>

11-10-2003 ("/2")

per GMM

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No specific pre topic given

Topic:

Omnibus regulatory reform

/1 - 11/4-KMG

In uctions:

Companion to -3629

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise	KMG	11/7	11/7			

FE Sent For:

<END>

-3630/1

2003 - ~~2004~~ LEGISLATURE

LRB-~~3629~~/1
ALL:all:all

Today
(Companion)

2003 BILL

AN ACT ***to repeal*** 19.52 (4), 30.01 (6b), 30.02, 30.12 (2), 30.12 (3) (b), 30.12 (3) (bn), 30.12 (3) (d), 30.12 (4) (title), 30.12 (4m) (title), 30.12 (5), 30.123 (3), 30.123 (5), 30.13 (1), 30.13 (2), 30.13 (4) (d), 30.135 (1) (title), 30.135 (2), (3) and (4), 30.18 (9), 30.19 (1) (b), 30.19 (2), 30.19 (3), 30.195 (3) (title), 30.195 (4), 30.195 (7), 30.206 (2), 30.206 (3m), 30.207 (4) (b), 30.207 (5), 137.04, 137.06, 196.491 (3) (g) 1m., 224.30 (2), 227.45 (7) (a) to (d), 227.46 (2), 227.46 (2m), 227.46 (3), 227.46 (4), 285.11 (6) (a) and (b), 285.21 (1) (a) (title), 285.21 (1) (b), 285.60 (2m) and 285.63 (2) (d); ***to renumber*** 30.12 (3) (bt) 1. to 9., 30.12 (4) (d), 30.135 (1) (a) 1., 30.135 (1) (a) 3., 30.20 (1) (c) 3., 196.491 (3) (g) 1., 285.61 (8) (a), 285.62 (8) and 285.66 (2); ***to renumber and amend*** 30.015, 30.07, 30.12 (1) (intro.), 30.12 (1) (a), 30.12 (1) (b), 30.12 (3) (a) 2., 30.12 (3) (a) 2m., 30.12 (3) (bt) (intro.), 30.12 (4) (a), 30.12 (4) (b), 30.12 (4) (c), 30.12 (4) (e), 30.12 (4) (f), 30.12 (4m), 30.123 (1), 30.123 (4), 30.135 (1) (a) (intro.), 30.135 (1) (a) 2., 30.135 (1) (b), 30.19 (1) (intro.), 30.19 (1) (a), 30.19 (1) (c), 30.19 (4), 30.195 (3), 30.20 (1) (d), 30.206 (1),

30.206 (3), 30.206 (4), 137.05 (title), 137.05, 227.45 (7) (intro.), 285.11 (6) (intro.), 285.21 (1) (a), 285.27 (2) (b), 285.61 (2) and 285.62 (2); ***to consolidate, renumber and amend*** 30.20 (1) (c) 1. and 2.; ***to amend*** 16.957 (2) (b) 1. (intro.), 16.957 (2) (c) 2., 16.957 (3) (b), 19.52 (3), 25.96, 29.601 (5) (a), 30.01 (1p), 30.10 (4) (a), 30.11 (4), 30.12 (title), 30.12 (3) (a) 6., 30.12 (3) (c), 30.123 (2), 30.13 (1m) (intro.), 30.13 (1m) (b), 30.13 (4) (a), 30.13 (4) (b), 30.131 (1) (intro.), 30.18 (2) (a) (intro.), 30.18 (2) (b), 30.18 (4) (a), 30.18 (6) (b), 30.19 (1m) (intro.), 30.19 (1m) (a), 30.19 (1m) (b), 30.19 (1m) (c), 30.19 (1m) (d), 30.19 (1m) (e), 30.19 (4) (title), 30.19 (5), 30.195 (1), 30.196 (intro.), 30.20 (1) (a), 30.20 (1) (b), 30.20 (2) (title), 30.20 (2) (a) and (b), 30.20 (2) (c), 30.2026 (2) (d), 30.2026 (3) (a), 30.206 (6), 30.206 (7), 30.207 (1), 30.207 (3) (d) 2., 30.28 (3) (b), 30.29 (3) (d), 30.298 (3), 31.39 (2m) (c), 66.1001 (2) (e), 66.1001 (4) (a), 84.18 (6), 106.01 (9), 106.025 (4), chapter 137 (title), subchapter I (title) of chapter 137 [precedes 137.01], 137.01 (3) (a), 137.01 (4) (a), 137.01 (4) (b), subchapter II (title) of chapter 137 [precedes 137.04], 146.82 (2) (a) (intro.), 196.195 (10), 196.24 (3), 196.374 (3), 196.491 (1) (d), 196.491 (2) (a) 3., 196.491 (2) (a) 3m., 196.491 (2) (g), 196.491 (3) (a) 3. a., 196.491 (3) (e), 221.0901 (3) (a) 1., 221.0901 (8) (a) and (b), 227.14 (2) (a), 227.19 (2), 227.19 (3) (intro.), 227.19 (3) (a), 227.19 (3) (b), 227.46 (1) (intro.), 227.46 (1) (h), 227.46 (6), 227.47 (1), 227.485 (5), 227.53 (1) (a) 3., 236.16 (3) (d) (intro.), 281.22 (2) (c), 285.11 (9), 285.17 (2), 285.21 (2), 285.21 (4), 285.23 (1), 285.27 (1) (a), 285.27 (2) (a), 285.27 (4), 285.60 (1) (a) 1., 285.60 (1) (b) 1., 285.60 (2) (a), 285.60 (6), 285.61 (1), 285.61 (3), 285.61 (4) (a), 285.61 (4) (b) 2. and 3., 285.61 (5) (a) (intro.), 285.61 (5) (c), 285.61 (7) (a), 285.61 (8) (b), 285.62 (1), 285.62 (3) (a) (intro.), 285.62 (3) (c), 285.62 (5) (a), 285.62 (6) (c) 1., 285.62 (7) (b), 285.63 (1) (d), 285.66 (3) (a), 285.69 (1) (a), 285.81 (1) (intro.), 289.27 (5), 299.05 (2) (a),

448.02 (3) (b), 448.675 (1) (b), 452.09 (2) (a), 452.09 (2) (c) (intro.), 452.09 (3) (d), 889.29 (1), 910.01 (1), 910.02 and 910.03; ***to repeal and recreate*** 30.12 (3) (title), 30.12 (3) (a) (intro.), 30.123 (title), 30.195 (2), 30.20 (1) (title), 285.11 (17), 285.60 (3) and 285.62 (9) (b); and ***to create*** 16.957 (2m), 30.01 (1am), 30.12 (1b), 30.12 (1g) (intro.), (a), (b) and (e) to (j), 30.12 (3) (a) 9., 30.12 (3) (a) 10., 30.12 (3) (a) 11., 30.12 (3) (a) 12., 30.12 (3) (br), 30.12 (3) (bv), 30.12 (3m), 30.121 (3w), 30.123 (6), 30.123 (7), 30.123 (8), 30.19 (1b), 30.19 (1m) (cm), 30.19 (1m) (g), 30.19 (1m) (h), 30.19 (3r), 30.19 (4) (a), 30.19 (4) (b), 30.19 (4) (c) 1., 30.195 (1m), 30.20 (1g) (title) and (b), 30.20 (1r), 30.20 (2) (bn), 30.20 (2) (d), 30.20 (2) (e), 30.201, 30.2022 (title), 30.206 (1) (title), 30.206 (1) (c) 1. to 3., 30.206 (3) (title), 30.206 (3) (c), 30.206 (5) (title), 30.208, 30.209, 66.0628, 66.1001 (4) (e), 77.52 (2r), 106.04, 137.11 to 137.24, 137.25 (2), 146.82 (2) (a) 22., 196.03 (7), 196.195 (5m), 196.374 (3m), 227.135 (1) (e) and (f), 227.137, 227.138, 227.14 (2) (a) 3., 227.14 (2) (a) 4., 227.14 (2) (a) 5., 227.14 (2) (a) 6., 227.14 (4) (b) 3., 227.185, 227.19 (3) (am), 227.19 (3) (cm), 227.40 (4m), 227.43 (1g), 227.44 (2) (d), 227.445, 227.483, 227.57 (11), 241.02 (3), 285.01 (12m), 285.14, 285.23 (5), 285.23 (6), 285.27 (2) (b) 1. to 3., 285.27 (2) (d), 285.60 (2g), 285.60 (5m), 285.60 (6m), 285.60 (6r), 285.60 (8), 285.60 (9), 285.60 (10), 285.61 (2) (b), 285.61 (8) (a) 2., 285.61 (10), 285.61 (11), 285.62 (2) (b), 285.62 (7) (bm), 285.62 (8) (b), 285.62 (12), 285.66 (2) (b), 285.755, 285.81 (1m), 295.13 (4) and 452.05 (3) of the statutes; **relating to:** administrative rules, guidelines, policies, and hearings; air pollution control; structures, deposits, and other activities in or near navigable waters; notice, hearing, and review procedures related to permits to place structures and materials and to conduct activities in or near navigable waters; nonmetallic mining reclamation financial assurances; the regulation of electric

generating facilities and high–voltage transmission lines; partial deregulation of telecommunications services; contributions by electric and gas utilities to the utility public benefits fund; grants for energy conservation and other programs; electric and gas utility service and rates; 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; credit agreements; electronic notarization and acknowledgement; electronic transactions and records; a sales tax exemption for temporary help services; extending the time limit for emergency rule procedures; and granting rule–making authority.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes relating to administrative rule–making and 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 partial 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.

ADMINISTRATIVE RULE MAKING AND PROCEDURES

This bill makes numerous changes relating to administrative rule making and procedures. The bill:

1. Expands the judicial review of the agency rule–making process as follows:

a. Requires a court, when determining if a promulgated rule is valid, to confine its review to the agency record unless it is necessary to supplement that record with additional evidence.

b. Expands the agency record subject to review to include any economic impact report and related analysis that the agency prepares in response to a petition from

a group economically affected by the rule, the plain–language analysis of the rule printed at the time the rule is published, and the report submitted to the legislature when the proposed rule is in final draft form.

c. Allows a court to find a rule invalid if the agency's decision–making process related to the adequacy of the factual basis to support the rule was arbitrary and capricious, if the agency's required analysis and determinations were arbitrary and capricious, or if the rule–making process was impaired by a material error in the agency's procedure when promulgating the rule.

d. Requires that if the agency's authority to promulgate a rule requires the rule to be comparable with federal programs or requirements or to exceed federal programs or requirements based on need, the court shall conduct a review of the agency record to determine if the agency determination was supported by substantial evidence.

2. Requires an agency to prepare an economic impact report for a proposed rule if a municipality, an association that represents a farm, labor, business, or professional group, or five or more persons, who may be economically affected by a proposed rule asks the agency to prepare that report.

3. Requires the Department of Administration (DOA) to review a proposed rule if petitioned by affected persons or if an economic impact report is prepared and to determine if the agency has statutory authority to promulgate the proposed rule, if the rule is consistent with and not duplicative of other rules or federal regulations, that the proposed rule is consistent with the governor's positions, and that the agency used complete and accurate data when developing the rule. Under the bill, DOA may return the proposed rule to the agency for rewriting.

4. Requires an agency, when preparing the analysis of a proposed rule as required under current law, to include all of the following in that analysis, in addition to the currently required summary of the rule and references to the statutes that authorize the rule and that the rule interprets:

a. A summary of the legal interpretations and policy considerations underlying the rule.

b. A summary of existing federal regulatory programs that address similar matters.

c. A summary of the data, studies, and other sources of information on which the proposed rule is based.

d. A summary of the methodology used to obtain and analyze the data and how the data supports the regulatory approach and the agency's findings.

5. Requires the agency to submit a proposed rule in final form to the governor for review, modification, or rejection.

6. Requires the administrator of the division of hearings and appeals to randomly assign hearing examiners to preside over administrative hearings.

7. Allows a person to request the substitution of an administrative hearing examiner and provides a procedure for that substitution.

8. Prohibits a hearing examiner from making any decision regarding constitutional issues.

9. Removes the provision that allowed certain agencies to have the hearing examiner make a proposed decision and have designated officials of the agency review that proposed decision and issue a final decision. Instead, the hearing examiner's decision is final.

10. Allows a hearing examiner to award the successful party his or her costs, including attorney fees, if the hearing examiner finds that the other party's claim or defense is frivolous.

11. Allows the venue of judicial review of a contested case where the petitioner is a nonresident to be in the county where the property involved is located or if no property involved, in the county where the dispute arose, instead of in Dane County as is current law.

AIR QUALITY MANAGEMENT

Air quality standards and emission standards for hazardous pollutants

Under the federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) has established a national ambient air quality standard (NAAQS) for each of six air pollutants, including ozone. Under current state law, if EPA establishes an NAAQS for a substance, the Department of Natural Resources (DNR) must promulgate by rule a similar ambient air quality standard, which may not be more restrictive that the federal standard. If EPA relaxes an NAAQS, DNR must alter the corresponding state standard unless it finds that the relaxed standard would not provide adequate protection for public health and welfare. Current law also authorizes DNR to promulgate an ambient air quality standard for a substance for which EPA has not promulgated an NAAQS if DNR finds that the standard is needed to provide adequate protection for public health or welfare.

This bill eliminates DNR's authority to promulgate an ambient air quality standard for a substance for which EPA has not established an NAAQS. The bill also provides that if EPA modifies an NAAQS, DNR must alter the corresponding state standard accordingly.

The CAA requires EPA to establish national emission standards for hazardous air pollutants (NESHAPs). Under current state law, if EPA establishes an NESHAP for a substance, DNR must promulgate by rule a similar standard, which may not be more restrictive than the federal standard in terms of emission limitations. If EPA relaxes an NESHAP, DNR must alter the corresponding state standard unless it finds that the relaxed standard would not provide adequate protection for public health and welfare. Current law also authorizes DNR to promulgate an emission standard for a hazardous air contaminant for which EPA has not promulgated an NESHAP if DNR finds that the standard is needed to provide adequate protection for public health or welfare.

This bill provides that if EPA establishes an NESHAP for a substance, DNR must promulgate a rule that incorporates the NESHAP and related administrative requirements. The bill prohibits DNR from promulgating a rule that is more restrictive in terms of emission limitations or otherwise more burdensome to operators of sources affected by the rule than the NESHAP and related administrative requirements.

The bill prohibits DNR from promulgating an emission standard for a hazardous air contaminant for which EPA has not promulgated an NESHAP unless DNR conducts a public health risk assessment that identifies the sources in this state that emit the contaminant, shows that identified individuals are subjected to levels of the hazardous air contaminant that are above recognized environmental health standards, evaluates options for managing the risks caused by the contaminant, considering costs and other relevant factors, and finds that the compliance alternative chosen by DNR for the contaminant reduces risks in the most cost–effective manner practicable.

State implementation plans and nonattainment areas

Under the CAA, an area with levels of a pollutant above an NAAQS must be designated as a nonattainment area. Nonattainment areas are subject to more stringent requirements under the CAA than other areas.

The CAA requires each state to submit implementation plans to show how the state will ensure that air quality in the state complies with each NAAQS, including showing how the state will reduce the level of pollutants in its nonattainment areas. Current state law requires DNR to prepare plans for the prevention, abatement, and control of air pollution in this state. The law requires that the plans submitted to EPA for the control of ozone conform with the CAA, except that measures beyond those required by the CAA may be included if they are necessary to comply with requirements to show that the state will make reductions in the levels of ozone in ozone nonattainment areas.

This bill specifies that when DNR prepares a state implementation plan for a pollutant for which EPA has established an NAAQS, DNR may only include provisions that are necessary to obtain EPA approval of the plan, including provisions that are necessary to comply with requirements to show that the state will make reductions in the levels of that pollutant in the state's nonattainment areas. The bill requires that, at least 90 days before DNR is required to submit a state implementation plan to EPA, DNR submit a report to the Joint Committee for Review of Administrative Rules (JCRAR) that describes the proposed plan and contains supporting documents for the plan. The bill gives JCRAR 30 days to review the report. If, within that time, JCRAR returns the report to DNR with a written explanation of why the committee is returning the report, DNR may not submit the state implementation plan to EPA until JCRAR agrees that DNR has adequately addressed the issues raised by JCRAR.

Current law authorizes DNR to identify nonattainment areas based on procedures and criteria that it establishes.

This bill prohibits DNR from identifying a county as part of a nonattainment area if the level of an air pollutant in the county does not exceed an ambient air quality standard, unless the CAA requires the county to be so designated. The bill requires that, at least 90 days before this state is required to provide a submission to EPA identifying an area as a nonattainment area, DNR submit a report to JCRAR that describes the area and contains supporting documents. The bill gives JCRAR 30 days to review the report. If, within that time, JCRAR returns the report to DNR with a written explanation of why the committee is returning the report, DNR may

not provide the submission to EPA until JCRAR agrees that DNR has adequately addressed the issues JCRAR has raised.

When EPA replaced an NAAQS based on the concentration of particulate matter in the atmosphere measured as total suspended particulates with standards based on the size of particulate matter, DNR retained the state emission standard based on total suspended particulates and also adopted the federal standards based on the size of the particulate matter.

The bill prohibits DNR from designating an area as a nonattainment area based on the concentration of particulate matter in the atmosphere measured as total suspended particulates and requires DNR to end the designation of an area as a nonattainment area if the designation was based on the concentration of particulate matter in the atmosphere measured as total suspended particulates.

New source review

Under the CAA, a person must obtain a construction permit before beginning the construction of a stationary source of air pollution that meets certain criteria. These sources are generally called major sources. The CAA also requires a person to obtain a construction permit before making changes to a major source if the changes amount to what the CAA calls "modifications." If a source is required to obtain a construction permit, the CAA imposes air pollution control requirements that are more stringent than those imposed on sources that are not required to obtain a construction permit, including those to which changes are made that do not amount to modifications. The part of the CAA that contains these provisions is often referred to as new source review.

Recently, EPA has promulgated regulations that revise the way in which it is determined under federal law whether changes to a major source are considered to be modifications, thus revising the situations in which major sources must obtain construction permits and implement more stringent pollution controls. States are not required to use the federal approach to determining whether changes are considered to be modifications, as long as their new source review provisions are at least as stringent as the federal new source review provisions.

This bill requires DNR to promulgate rules incorporating the recent revisions that EPA made in its regulations for determining whether changes to a major source amount to modifications and any future revisions that EPA makes. The bill requires DNR to make similar revisions to its rules for sources that are not covered by the CAA (minor sources) if the revisions reduce administrative requirements.

Permit requirements

The CAA requires states to require operation permits for major sources of air pollution and construction permits for the construction or modification of major sources of air pollution. Current state law generally requires operation permits for all stationary sources of air pollution and construction permits for the construction or modification of all stationary sources of air pollution.

Current state law authorizes DNR to promulgate rules exempting types of sources from the requirements to obtain permits if the potential emissions from the sources do not present a significant hazard to public health, safety, or welfare or to the environment. This bill requires DNR to promulgate rules exempting minor

sources from the requirement to obtain a construction permit and an operation permit if emissions from the sources do not present a significant hazard to public health, safety, or welfare or to the environment.

This bill specifically exempts an agricultural source from the requirement to obtain a construction permit and an operation permit, unless the CAA requires permits for the source. The bill exempts from the construction permit requirement a source that is a component of a process, of equipment, or of an activity that is otherwise covered by a preexisting operation permit.

Current state law authorizes DNR to promulgate rules specifying types of sources that may obtain general construction permits and general operation permits, which may cover numerous similar sources. This bill requires DNR to promulgate rules for the issuance of general permits for similar stationary sources. The bill requires that within 15 days of receiving an application for coverage under a general permit DNR either notify the applicant whether the source qualifies for coverage or tell the applicant what additional information DNR needs to determine whether the source qualifies for coverage. The bill specifies that a person is not required to obtain a construction permit or to apply for coverage under a general permit before beginning to construct or modify a source that qualifies for a general permit, unless the CAA requires a construction permit for the source. The bill limits DNR's ability to specify expiration dates for coverage under general permits. The bill also eliminates DNR's authority to promulgate rules providing for general construction permits.

The bill requires DNR to promulgate rules, which must be consistent with the CAA, providing a simplified process under which DNR issues a registration permit for a stationary source with low actual emissions. The bill requires that within 15 days of receiving an application for a registration permit DNR either grant or deny the registration permit or tell the applicant what additional information DNR needs to determine whether the source qualifies for a registration permit.

The bill requires DNR to grant a waiver from the requirement to obtain a construction permit for the construction or modification of a stationary source upon a showing by the owner or operator of the source that obtaining the permit would cause undue hardship, unless the CAA requires the owner or operator to obtain a construction permit. DNR must act on a waiver request within 15 days of its receipt.

The bill requires DNR to continually assess air pollution permit obligations and implement measures, consistent with the CAA, to lessen those obligations, including consolidating permits for sources at a facility into one permit, expanding permit exemptions, and expanding the availability of registration permits, general permits, and construction permit waivers. The bill also requires DNR to take those measures in response to petitions.

Permitting process

Current state law specifies a process for DNR review of applications for construction permits for stationary sources of air pollution. Under this process, within 20 days after receiving an application for a construction permit, DNR must notify the applicant of any additional information needed to process the application. Once the additional information is received, DNR must complete an analysis of the

effect of the proposed new source (or modification to an existing source) on air quality and a preliminary determination on the approvability of the application. DNR must make this determination within 120 days of receiving the additional information that it requested for a major source and within 30 days for a minor source.

This bill reduces those periods to 60 days for a major source and 15 days for a minor source. The bill also provides that if the additional information is not requested (by DNR or by a certified contractor, as described below) within 20 days after the application is received, additional information may be requested but the 60 and 15 day periods begin to run after the 20 days are up.

The bill provides that an application for an air pollution construction permit may be made to a private contractor certified by DOA. The certified contractor performs the determination of whether additional information is needed to process the application, the analysis of the effect of the proposed new source (or modification to an existing source) on air quality, and the preliminary determination on the approvability of the application. The bill requires DOA, in consultation with DNR, to specify minimum standards relating to staffing and professional expertise and other conditions applicable to certified contractors.

Current law requires DNR to distribute the analysis and preliminary determination for a construction permit application and to publish a newspaper notice announcing the opportunity for public comment and a public hearing on an application for a construction permit. The bill requires DNR to publish the newspaper notice within ten days after DNR prepares the analysis and preliminary determination for a construction permit application or, if a certified contractor prepares them, within ten days after DNR receives them from the certified contractor.

Current law requires DNR to receive public comments on a construction permit application for 30 days after publishing the newspaper notice. DNR is authorized to hold a public hearing if requested by a person, an affected state, or EPA within 30 days after publishing the newspaper notice and is required to hold a public hearing if there is significant public interest in holding a hearing. The department must hold the hearing within 60 days after the end of the public comment period.

The bill specifies that DNR may hold a hearing if requested by a person who may be directly aggrieved by the issuance of the permit or by an affected state or EPA. It also requires that the hearing be held within 30, rather than 60, days after the end of the public comment period.

Current law requires DNR to act on a construction permit application within 60 days after the close of the public comment period or the public hearing, whichever is later, unless compliance with environmental impact statement requirements requires a longer time. This bill requires DNR to act within 60 days after it publishes the newspaper notice (30 days after the close of the public comment period), unless compliance with environmental impact statement requirements requires a longer time. The bill authorizes DNR to extend any time limit applicable to it or a certified contractor under this process at the request of an applicant for a permit.

Under the bill, if DNR does not act on an application within the required time limit, it must include in a report the reasons for the delay in acting on the application,

including the names of the department's employees responsible for review of the application, and recommendations for how to avoid similar delays in the future. DNR must make these reports available to the public, and submit the reports to JCRAR on a quarterly basis.

The bill makes changes to the processing of applications for operation permits that are similar to the changes it makes to the processing of construction permits, including providing for the use of certified contractors. Under current law, DNR must act on an application for an operation permit within 180 days after the applicant submits to DNR the results of equipment testing and emission monitoring required by the construction permit. This bill reduces that deadline to 30 days.

Under current law, a permittee must apply for the renewal of an operation permit at least 12 months before the permit expires. This bill reduces that requirement to six months.

Criteria for approval of permits

Under current state law, DNR may approve an application for a construction permit or an operation permit if it finds that criteria specified in the law for the stationary source are met. This bill provides that DNR may not modify a preliminary determination of approvability made by a private contractor unless modification is necessary to comply with the CAA or unless information received from the public, an affected state, or EPA or an environmental impact statement provide clear and convincing evidence that issuance of the permit would cause material harm to public health, safety, or welfare.

Under current law, one of the criteria for approving a permit for the construction or modification of a major source in a nonattainment area is a finding by DNR, based on an analysis of alternatives, that the benefits of the construction or modification significantly outweigh the environmental and social costs imposed as a result of the construction or modification. This bill eliminates that criterion.

Continuation of operation

Under current law, if a person timely submits a complete application for an operation permit and submits any additional information within the time set by DNR, the stationary source may continue to operate even if DNR has not yet issued the permit. Under this bill, if a person submits an application for renewal of an operation permit before the date that the operation permit expires, the stationary source may continue to operate, unless the CAA would prohibit continued operation.

Other provisions related to air quality management

Current law authorizes DNR to require owners and operators of sources of air pollution to monitor emissions from those sources or to monitor air quality in the areas of those sources. This bill prohibits DNR from including a monitoring requirement in an operation permit if the applicant demonstrates that the cost of compliance with the requirement would exceed the cost of compliance with monitoring requirements imposed on similar sources by an adjacent state or if the monitoring is not needed to provide assurance of compliance with requirements that apply to the source, unless the CAA requires the monitoring.

Current law specifies that an air pollution permit or part of a permit issued by DNR becomes effective unless the permit holder seeks a hearing on the permit or part

of a permit. The bill specifies that if a permit holder or applicant challenges part of a permit, the remainder of the permit becomes effective and the permit holder or applicant may begin the activity for which the permit was issued.

This bill requires DNR to report to the legislature proposals for lessening air pollution permit obligations, including consolidating permits for sources at a facility into one permit, expanding permit exemptions, and expanding the availability of registration permits, general permits, and construction permit waivers and a description of requirements in the CAA that limit DNR's ability to take those actions. The bill also requires DNR to provide to JCRAR a description of provisions in this state's CAA implementation plans that may not have been necessary to obtain EPA approval and recommendations for removing those provisions from the state implementation plans.

NAVIGABLE WATERS

This bill makes changes in the permitting, decision, notice, hearing, and court procedures that apply to permits and contracts given by DNR in regulating structures, deposits, and other activities that occur in or near navigable waterways (waterway activities).

Permitting changes in general

With limited exemptions, under current law, an owner of waterfront property (riparian owner) may not engage in a waterway activity unless the riparian owner has first obtained a permit or contract from DNR that is specific to the waterway activity (an individual approval) or unless the waterway activity is authorized under a general permit issued by DNR.

This bill restructures the substantive requirements for individual permits, general permits, and contracts for removing material from navigable waterways. It also creates exemptions from both of these types of permits and from these contracts for certain waterway activities. The types of permits that are affected by these new general and individual permitting, contracting, and exemption provisions are permits to place structures or deposit material (placement permits), permits to construct or maintain bridges (bridge permits), permits to enlarge or connect waterways or to grade or remove top soil from banks along navigable rivers and streams (enlargement permits), permits to change the courses of streams and rivers (stream course permits), and permits and contracts to remove material from beds of navigable waterways (removal approvals).

General permits

Under current law, DNR may, but is not required to, issue general permits for waterway activities that are covered by the abbreviated procedure described above and for certain activities that require an enlargement permit. Under current law, general permits may be issued in certain designated areas of the state for any waterway activity that requires a general permit. The bill expands the use of general permits by requiring DNR to issue statewide general permits for certain waterway activities and to allow DNR to promulgate rules to specify additional waterway activities that may be authorized under a general permit. The bill allows DNR to impose certain construction and design requirements, location requirements, and environmental restrictions on the general permits. Under current law, a person

seeking to conduct a waterway activity under a general permit must notify DNR not less than 20 days before starting the activity. The bill requires this notification to be in writing and and increases the 20 days to 30 days. If DNR does not act within 30 days of the notification, the waterway activity is considered to be authorized.

Placement permits

For placement permits, current law provides an abbreviated procedure for reviewing applications. Under the procedure, DNR may approve or disapprove the permit application without giving notice or conducing a hearing. Types of permit applications to which this abbreviated procedure applies include applications to place sand to improve recreational use and applications to place devices to improve fish habitat.

This bill repeals this abbreviated review procedure. Instead, under the bill the general permitting process applies to most of the waterway activities that are subject to the abbreviated procedure.

The bill also exempts certain waterway activities from both general and individual placement permits if they do not interfere with the rights of other riparian owners and if they are located outside an area of special natural resource interest (exempt waterway activities). Under current law, some of these activities are subject to the abbreviated procedure and some must meet notice and hearing requirements before being issued. The bill defines an area of "special natural resource interest" to be a state natural area or an area identified by DNR as possessing scientific value or as being an outstanding or exceptional resource water. Examples of such waters include wild and scenic rivers and certain trout streams. If a waterway activity is not an exempt waterway activity, the individual permitting process applies unless the waterway activity is covered by a general permit.

Whether a waterway activity is subject to the individual placement permit process or the general placement permit process or is totally exempt from any type of placement permit depends on the placement or deposit meeting certain size and other criteria. Structures and deposits that are subject to these placement permit provisions include deposits of sand, crushed rock, gravel, or riprap; boat shelters and hoists; intake and outlet structures; piers; and wharves. Under current law, a riparian owner may construct a pier or wharf beyond the ordinary high–water mark or an established bulkhead line without a placement permit if the wharf or pier meets certain criteria. This bill eliminates this exemption.

Under current law, DNR may, but is not required to, issue placement permits for waterway activities that meet the requirements for the permit. Under the bill, DNR must issue placement permits for activities that meet these requirements.

Enlargement permits

Under current law, a person must be issued an enlargement permit to do any of the following:

1. Construct, dredge, or enlarge any artificial waterway in order to connect it with an existing navigable waterway (connection permit requirement). The bill limits this permit requirement to those artificial waterways that are already connected to the navigable waterway or that will connect with the navigable waterway upon completion of the construction.

2. Connect an artificial or natural waterway, whether or not navigable, with an existing navigable waterway. The bill repeals this provision.

3. Construct, dredge, or enlarge any part of an artificial waterway that is located within 500 feet of an existing navigable stream (500–foot permit requirement).

4. Grade or remove top soil from the bank of a navigable waterway if the exposed area will exceed 10,000 square feet (grading permit requirement).

The bill creates an exemption from the 500–foot permit requirement, if the artificial waterway's only surface connection to a navigable waterway is an overflow device and the construction, dredging, or enlargement is authorized by a storm water discharge permit or a water sewerage and facility plan authorized by DNR (storm water–sewerage projects).

The bill creates an exemption from the grading permit requirement if the grading or removal of top soil is not located in an area of special natural resource interest and is authorized by a storm water discharge permit, by a shoreland or wetland zoning ordinance, or by a construction site erosion control plan.

The bill requires DNR to issue a general permit to meet the connection permit requirement and the 500–foot permit requirement for construction, dredging, and enlargements that are part of an approved storm water–sewerage project, but that are not covered by the exemption described above. The bill requires DNR to issue a general permit to meet the connection permit requirement and the 500–foot requirement for construction, dredging, and enlargements that are designed to enhance wildlife habitat or wetlands or that affect a body of water less than one acre in size. The bill requires DNR to issue a general permit to meet the grading permit requirement for any grading or removing of top soil that is not covered by the exemption described above.

As to individual enlargement permits, the bill imposes the additional requirement that the activity not be detrimental to the public interest.

Bridge permits

The bill makes the following changes to current permitting procedures for the construction and maintenance of bridges:

1. Allows bridge construction and maintenance to be authorized by the legislature.

2. Subjects bridges that cross navigable streams that are less than 35 feet wide to the general permitting provisions. Under current law, such bridges are exempt from the bridge permitting requirements.

3. Changes the permitting provisions to specifically cover the placement of culverts.

4. Subjects culverts that have diameters of less than 60 inches to the general permitting provisions.

5. Exempts culverts that have a diameter of less than 48 inches and that are part of private roads or driveways from all of the bridge permitting requirements.

6. Repeals the requirement that the holder of a bridge permit construct and maintain a bridge that is used by the public to be in a safe condition.

Stream course permits

Under current law, a person must be issued a stream course permit to change or straighten the course of a stream or river. The bill requires DNR to issue a general permit under which riparian owners may change or straighten the course of streams or rivers if the change or straightening involves a relocation of less than a total of 500 feet or a relocation of a stream with an average flow of less than 2 cubic feet per second. The bill also repeals an exemption for municipal or county lands in Milwaukee County and a provision that states that compliance with a stream course permit is a presumption of the exercise of due care. The bill also allows the legislature to authorize the changing or straightening of stream or river courses.

Removal approvals

The bill makes the following changes to current provisions regarding removal approvals:

1. Allows the removal of materials to be authorized by the legislature.

2. Limits the scope of the general requirement for a removal contract to natural navigable lakes. Under current law, both natural and artificial lakes are subject to this requirement.

3. Limits the scope of the general requirement for a removal permit to navigable streams. Under current law, both navigable and nonnavigable streams are subject to this requirement.

4. Exempts removals for certain specified amounts if the removals are not from an area of natural resource interest, do not contain hazardous substances, and will be placed in an upland area.

5. Requires DNR to issue general permits for other removals that are within specified amounts.

Boathouses

Current law, with some exceptions, imposes a prohibition on placing a boathouse beyond the ordinary high–water mark of a navigable waterway. This bill creates an exemption for the construction, repair, or maintenance of a boathouse that is in compliance with all individual or general permitting requirements, that is used exclusively for commercial purposes, that is on land zoned exclusively for commercial or industrial purposes or is in a brownfield or blighted area, and that is located in a commercial harbor or on a tributary of Lake Michigan or Lake Superior. Current law defines a "brownfield" to be an industrial or commercial facility, the expansion or redevelopment of which is complicated by environmental contamination.

Notice, hearing, and decision provisions for individual permits

Under current law, for individual placement permits, bridge permits, removal permits, stream course permits, and enlargement permits, DNR must order a public hearing to be held within 60 days after receiving a complete application for the permit or provide notice (notice of application) that DNR will proceed on the application without a public hearing unless a substantive written objection is received within 30 days after the notice is published. DNR must provide the notice of application to various parties and to the applicant, who in turn must publish notice. Current law defines a "substantive written objection" to be one that gives the

reasons why the issuance of the proposed permit will violate state law and that states that the person objecting will appear at the public hearing to present information supporting the objection. The applicant must publish the notice in a newspaper that is likely to give notice in the area where the waterway activity will be located (area newspaper).

If DNR does not receive a substantive written objection within the 30–day period, DNR proceeds on the permit application. If DNR receives such an objection, the public hearing must be held within 60 days after being ordered. At least 10 days before the hearing, the Division of Hearings and Appeals in the Department of Administration must mail a notice of the public hearing to the applicant, all of the parties who received the notice of application, and anyone who submitted a substantive written objection. The applicant again must publish the notice in an area newspaper.

Under current law, DNR may also use this notice and hearing procedure when it is not specifically required if DNR determines that substantial interests of any party may be adversely affected by the granting of the permit.

Under the bill, DNR must provide notice of a complete application to interested members of the public within 15 days after DNR determines that the application is complete. DNR must provide a period for public comment after providing notice that the application is complete. If no hearing is requested, the public comment period ends in 30 days.

If a public hearing is requested, the comment period ends 10 days after the conclusion of the hearing. The permit application may contain a request for a public hearing or any other person may request a hearing. DNR may also decide on its own to hold a hearing if it determines that there is a significant public interest in the permit. A hearing request must be submitted to DNR within 30 days of the notice that the application is complete. DNR must then provide notice within 15 days, and the hearing must be held within 30 days of the notice being complete. DNR must issue its decision within 30 days after the hearing.

If no hearing is to be held, then DNR must issue its decision within 30 days after the close of the comment period.

The changes to the applicability of the hearing and notice procedures for individual permits under the bill include the following:

1. The procedure applies to removal approvals and stream course permits, as well as the permits covered under current law.

2. The procedure applies to permits to place water ski jumps, replacing the procedures that apply to these permits under current law.

3. The bill repeals the authority that allowed DNR to use these notice and hearing procedures when they were not required to do so in making determinations that affected navigable waters and navigation.

4. The procedures specifically apply to applications for modifications of individual permits.

Administrative and court review of DNR decisions on individual permits

Under current law, if a substantial interest of a person is injured by an agency action and there is a dispute of material fact, that person has the right to an

administrative hearing before an impartial hearing officer. The notice requirements, procedures, rules of evidence, records, and right to judicial review are specified in detail under current law.

Under this bill, an applicant for or holder of an individual permit, or five or more persons, may ask DNR for an administrative hearing regarding the issuance, denial, or modification of an individual permit, or regarding a term or condition of an individual permit. If DNR determines that the request for a hearing gives specific reasons why the department's decision violates state law, DNR is required to hold an administrative hearing. The bill requires that the hearing be conducted as a contested case hearing and be subject to current law's administrative hearing requirements regarding contested case hearings, including the procedures, rules of evidence, records, and right to judicial review.

Instead of requesting an administrative hearing to review the DNR decision, any person who has the right to request such a hearing may bring a court action to review DNR's decision. The bill requires the court to review the evidence and examine witnesses, rather than review the record of DNR's action. In addition, the bill allows a party to the administrative hearing to stop an administrative hearing and have the court take jurisdiction over the issues raised in the hearing. If an administrative hearing is removed to a court, that court is required by the bill to review the evidence and examine witnesses, independent of DNR's evidence review and witness examination.

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 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 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.

FEES IMPOSED BY POLITICAL SUBDIVISIONS

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

PATIENT HEALTH CARE RECORDS

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

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

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

consent, to include purposes of health care operations, as defined and authorized in federal law.

APPRENTICESHIP-TO-JOURNEYMAN JOB-SITE RATIOS

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

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

ACQUISITIONS OF IN-STATE BANKS AND BANK HOLDING COMPANIES

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

LAWSUITS CONCERNING FINANCIAL INSTITUTIONS

With certain exceptions, this bill prohibits any person from bringing a lawsuit against a bank, savings bank, savings and loan association, or any affiliate of such an institution (financial institution) based upon any of the following promises or commitments of the financial institution, unless the promise or commitment is in writing, sets forth relevant terms and conditions, and is signed by the financial institution: 1) a promise or commitment to lend money, grant or extend credit, or make any other financial accommodation; or 2) a promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation. This prohibition does not apply to transactions that are subject to the Wisconsin Consumer Act (which generally regulates credit transactions of $25,000 or less that are entered into for personal, family, or household purposes).

Currently, under the doctrine of promissory estoppel, the existence of an enforceable contract may be implied if a person makes a promise, the promise is one which the person should reasonably expect to induce action or forbearance of a definite and substantial character, the promise induces such action or forbearance, and injustice can be avoided only by enforcement of the promise. This bill provides that any promise or commitment described above may not be enforced under the doctrine of promissory estoppel. This prohibition does not apply to transactions that are subject to the Wisconsin Consumer Act.

FINANCIAL ASSURANCE FOR NONMETALLIC MINING RECLAMATION

Current law requires counties to administer ordinances to ensure that nonmetallic mining sites are reclaimed. "Nonmetallic" mining means extracting 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 (UCC) 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 UCC.

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 DOA primary rule–making authority with regard to the use of electronic documents and signatures by governmental units and grants DOA and the secretary of state joint rule–making authority with regard to electronic notarizations. In addition, this bill requires DOA'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 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 DOA 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 22 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 UCC). 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 UCC may be used. Under this bill, an electronic document qualifies as a transferable record only if the issuer of the electronic document expressly agrees that the electronic document is a transferable record.

SALES TAX EXEMPTION FOR TEMPORARY HELP SERVICES

Under this bill, no part of the charge for services provided by a temporary help company is subject to the sales tax, if the client for whom the services are provided controls the means of performing the services and is responsible for the satisfactory completion of the services. Under current law, a temporary help company is, generally, any entity that contracts with a client to supply individuals to perform services for the client on a temporary basis.

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. 19.52 (3) of the statutes is amended to read:

19.52 **(3)** Chapters 901 to 911 apply to the admission of evidence at the hearing. The ~~board~~ hearing examiner shall not find a violation of this subchapter or subch. III of ch. 13 except upon clear and convincing evidence admitted at the hearing.

SECTION 6. 19.52 (4) of the statutes is repealed.

SECTION 7. 25.96 of the statutes is amended to read:

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

SECTION 8. 29.601 (5) (a) of the statutes is amended to read:

29.601 **(5)** (a) This section does not apply to any activities carried out under the direction and supervision of the department of transportation in connection with the construction, reconstruction, maintenance and repair of highways and bridges in accordance with s. ~~30.12 (4)~~ 30.2022.

SECTION 9. 30.01 (1am) of the statutes is created to read:

30.01 **(1am)** "Area of special natural resource interest" means any of the following:

(a) A state natural area designated or dedicated under ss. 23.27 to 23.29.

(b) A surface water identified by the department as an outstanding or exceptional resource water under s. 281.15.

(c) An area that possesses significant scientific value, as identified by the department.

SECTION 10. 30.01 (1p) of the statutes is amended to read:

30.01 **(1p)** "Fishing raft" means any raft, float or structure, including a raft or float with a superstructure and including a structure located or extending below or beyond the ordinary high–water mark of a water, which is designed to be used or is normally used for fishing, which is not normally used as a means of transportation on water and which is normally retained in place by means of a permanent or semipermanent attachment to the shore or to the bed of the waterway. "Fishing raft" does not include a boathouse or fixed houseboat regulated under s. 30.121 nor a wharf or pier regulated under ~~s.~~ ss. 30.12 and 30.13.

SECTION 11. 30.01 (6b) of the statutes is repealed.

SECTION 12. 30.015 of the statutes is renumbered 30.208 (2) and amended to read:

30.208 **(2)** ~~TIME LIMITS FOR ISSUING PERMIT DETERMINATIONS~~ PROCEDURE FOR COMPLETING APPLICATIONS. In issuing individual permits or entering contracts under this ~~chapter~~ subchapter, the department shall initially determine whether a complete application for the permit or contract has been submitted and, no later than ~~60~~ 30 days after the application is submitted, notify the applicant in writing about the initial determination of completeness. If the department determines that the

application is incomplete, the notice shall state the reason for the determination and the specific items of information necessary to make the application complete. An applicant may supplement and resubmit an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may resubmit an application that the department has determined to be incomplete under this section. The department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the applicant makes material additions or alterations to the activity or project for which the application has been submitted. The rules promulgated under s. 299.05 apply only to applications for individual permits or contracts under this subchapter that the department has determined to be complete.

SECTION 13. 30.02 of the statutes is repealed.

SECTION 14. 30.07 of the statutes is renumbered 30.2095, and 30.2095 (1) (a), as renumbered, is amended to read:

30.2095 **(1)** (a) Except as provided in par. (b), every permit or contract issued under ss. 30.01 to 30.29 for which a time limit is not provided by s. 30.20 (2) is void unless the activity or project is completed within 3 years after the permit or contract was issued.

SECTION 15. 30.10 (4) (a) of the statutes is amended to read:

30.10 **(4)** (a) This section does not impair the powers granted by law under s. ~~30.123~~ 30.1235 or by other law to municipalities to construct highway bridges, arches, or culverts over streams.

SECTION 16. 30.11 (4) of the statutes is amended to read:

30.11 **(4)** RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not abridge the riparian rights of riparian ~~proprietors~~ owners. Riparian ~~proprietors~~ owners may place solid structures or fill up to such line.

SECTION 17. 30.12 (title) of the statutes is amended to read:

30.12 (title) **Structures and deposits in navigable waters ~~prohibited; exceptions; penalty.~~**

SECTION 18. 30.12 (1) (intro.) of the statutes is renumbered 30.12 (1d) and amended to read:

30.12 **(1d)** ~~GENERAL PROHIBITION~~ PERMITS REQUIRED. (intro.) ~~Except as provided under subs. (4) and (4m), unless a~~ Unless an individual or general permit has been ~~granted by the department pursuant to statute or~~ issued under this section or authorization has been granted by the legislature ~~has otherwise authorized structures or deposits in navigable waters, it is unlawful~~, no person may do any of the following:

SECTION 19. 30.12 (1) (a) of the statutes is renumbered 30.12 (1d) (a) and amended to read:

30.12 **(1d)** (a) ~~To deposit~~ Deposit any material or ~~to~~ place any structure upon the bed of any navigable water where no bulkhead line has been established~~; or~~.

SECTION 20. 30.12 (1) (b) of the statutes is renumbered 30.12 (1d) (b) and amended to read:

30.12 **(1d)** (b) ~~To deposit~~ Deposit any material or ~~to~~ place any structure upon the bed of any navigable water beyond a lawfully established bulkhead line.

SECTION 21. 30.12 (1b) of the statutes is created to read:

30.12 **(1b)** DEFINITION. In this section, "structure" includes a vessel for commercial storage and its anchoring device.

SECTION 22. 30.12 (1g) (intro.), (a), (b) and (e) to (j) of the statutes are created to read:

30.12 **(1g)** EXEMPTIONS. (intro.) A riparian owner is exempt from the permit requirements under this section for the placement of a structure or the deposit of material if the structure or material is located in an area other than an area of special natural resource interest, does not interfere with the rights of other riparian owners, and is any of the following:

(a) A deposit of sand, gravel, or stone that totals less than 2 cubic yards in any 5–year period.

(b) A structure, other than a pier or a wharf, that is placed on a seasonal basis and that is less than 200 square feet in size and less than 38 inches in height.

(e) A boat shelter, boat hoist, or boat lift that is placed on a seasonal basis adjacent to the riparian owner's pier or wharf or to the shoreline on the riparian owner's property.

(f) A pier that is no more than 6 feet wide, that extends no further than to a point where the water is 3 feet at its maximum depth, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is closer to the shoreline, and which has no more that 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline.

(g) A wharf that extends no more than 30 feet.

(h) An intake or outfall structure that is authorized by a storm water discharge permit approved by the department under ch. 283 or a facility plan approved by the department under s. 281.41.

(i) Riprap in an amount not to exceed 75 linear feet and if the riprap is located outside an area where riprap has been previously placed.

(j) Riprap in an amount not to exceed 300 linear feet and if the riprap is located within an area where riprap has been previously placed.

SECTION 23. 30.12 (2) of the statutes is repealed.

SECTION 24. 30.12 (3) (title) of the statutes is repealed and recreated to read:

30.12 **(3)** (title) GENERAL PERMITS.

SECTION 25. 30.12 (3) (a) (intro.) of the statutes is repealed and recreated to read:

30.12 **(3)** (a) (intro.) The department shall issue statewide general permits under s. 30.206 that authorize riparian owners to do all of the following:

SECTION 26. 30.12 (3) (a) 2. of the statutes is renumbered 30.12 (1g) (c) and amended to read:

30.12 **(1g)** (c) ~~Place a~~ A fish crib, spawning reef, wing deflector, or similar device that is placed on the bed of navigable waters for the purpose of improving fish habitat.

SECTION 27. 30.12 (3) (a) 2m. of the statutes is renumbered 30.12 (1g) (d) and amended to read:

30.12 **(1g)** (d) ~~Place a~~ A bird nesting platform, ~~a~~ wood duck house, or similar structure that is placed on the bed of a navigable water for the purpose of improving wildlife habitat.

SECTION 28. 30.12 (3) (a) 6. of the statutes is amended to read:

30.12 **(3)** (a) 6. Place a permanent boat shelter adjacent to the owner's property for the purpose of storing or protecting watercraft and associated materials, except that no general permit may be ~~granted~~ issued for a permanent boat shelter which is

constructed after May 3, 1988, if the property on which the permanent boat shelter is to be located also contains a boathouse within 75 feet of the ordinary high–water mark or if there is a boathouse over navigable waters adjacent to the owner's property.

SECTION 29. 30.12 (3) (a) 9. of the statutes is created to read:

30.12 **(3)** (a) 9. Place an intake or outfall structure that is less than 6 feet from the water side of the ordinary high–water mark and that is less than 25 percent of the width of the channel in which it is placed.

SECTION 30. 30.12 (3) (a) 10. of the statutes is created to read:

30.12 **(3)** (a) 10. Place a pier to replace a pier that has been in existence at least 10 years before the effective date of this subdivision .... [revisor inserts date], does not exceed 10 feet in width, and does not exceed 500 square feet in area.

SECTION 31. 30.12 (3) (a) 11. of the statutes is created to read:

30.12 **(3)** (a) 11. Place a pier that does not exceed 500 square feet in area in a lake that is 500 acres or more in area.

SECTION 32. 30.12 (3) (a) 12. of the statutes is created to read:

30.12 **(3)** (a) 12. Place a vessel for commercial storage on Lake Michigan or Lake Superior or in any tributary of Lake Michigan or Lake Superior that is determined to be navigable by the federal government.

SECTION 33. 30.12 (3) (b) of the statutes is repealed.

SECTION 34. 30.12 (3) (bn) of the statutes is repealed.

SECTION 35. 30.12 (3) (br) of the statutes is created to read:

30.12 **(3)** (br) The department may promulgate rules that specify structures or deposits, in addition to those listed in par. (a), that may be authorized by statewide general permits.