LRB-3932

2003 DRAFTING REQUEST

Bill

Received: **12/22/2003**

Received By: **chanaman**

Wanted: **Soon**

Identical to LRB:

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

By/Representing:

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

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - banking inst.**

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**
laura.rose@legis.state.wi.us
daryl.hinz@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Acquisitions of in-state banks and bank holding companies

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rmarchan 12/22/2003	jdyer 12/23/2003		_____ _____			
/1			chaugen 12/23/2003	_____ _____	lemery 12/23/2003	lemery 01/05/2004	

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required

FE Sent For:

none needed

<END>

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/?	rmarchan	/1 12/23 jld	ch 12-23	ch pg 12-23			

FE Sent For:

<END>

3932/1

2003 – 2004 LEGISLATURE

LRB-~~8380/P5~~

~~RT/MK/MS/GM~~/RM:kjf&kg:ch

stays + jd

12-23

~~PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION~~

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

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

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes relating to administrative rule–making procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, the regulation of electric generating facilities and transmission lines, the deregulation of telecommunications services, contributions to and grants from the utility public benefits fund, economic development costs of electric and gas utilities, reciprocal agreements for real estate licenses, comprehensive planning by local governmental units, fees imposed by political subdivisions, the confidentiality of patient health care records, apprentice–to–journeyman job–site ratios, the acquisition of in–state banks and in–state bank holding companies, electronic notarizations and acknowledgements, electronic transactions and records, a sales tax exemption for temporary help services, and credit agreements and related documents.

LARGE ELECTRIC GENERATING FACILITIES AND HIGH–VOLTAGE TRANSMISSION LINES

Under current law, a person may not begin to construct certain large electric generating facilities or high–voltage transmission lines unless the Public Service Commission (PSC) has issued a certificate of public convenience and necessity (CPCN) for the facility or line. The process for the PSC to consider an application for a CPCN is subject to various deadlines. One deadline requires the PSC to take final action on an application within 180 days after the application is completed. Under certain circumstances, a court may extend the deadline by an additional 180 days. If the PSC fails to take final action within the deadline, current law provides that the

PSC is considered to have issued the CPCN, unless another state is also taking action on the same or a related application. Under this bill, the PSC is considered to have issued the CPCN even if another state is also taking action on the same or a related application.

Also under current law, at least 60 days before a person applies for a CPCN for a large electric transmission facility or high–voltage transmission line, the person must provide an engineering plan regarding the facility or line to the Department of Natural Resources (DNR). Under the bill, this requirement applies only to applications for large electric generating facilities, and not to applications for high–voltage transmission lines.

In addition, current law requires the PSC to prepare a strategic energy assessment every two years that evaluates the adequacy and reliability of the state's electricity supplies. An assessment must describe, among other things, large electric generating facilities and high–voltage transmission lines on which utilities plan to begin construction within three years. The bill requires an assessment to describe large electric generating facilities and high–voltage transmission lines on which utilities plan to begin construction within seven years, rather than three years.

PARTIAL DEREGULATION OF TELECOMMUNICATIONS SERVICES

Under current law, a person may petition the PSC to begin proceedings for determining whether to partially deregulate certain telecommunications services. The PSC may also begin such proceedings on its own motion. If the PSC makes certain findings regarding competition for such telecommunications services, the PSC may issue an order suspending specified provisions of law. Current law does not impose any deadlines on such proceedings.

The bill requires the PSC to complete the proceedings no later than 120 days after a person files a petition. In addition, if the PSC begins proceedings based on its own motion, the proceedings must be completed no later than 120 days after the PSC provides notice of its motion. If the PSC fails to complete the proceedings and, if appropriate, issue an order within the deadline, the bill provides for the suspension of any provisions of law that are specified in the petition or in the PSC's motion.

UTILITY PUBLIC BENEFITS FUND

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

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

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

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

ECONOMIC DEVELOPMENT COSTS OF ELECTRIC AND GAS UTILITIES

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

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

RECIPROCAL AGREEMENTS FOR REAL ESTATE LICENSES

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

This bill allows DRL to grant licenses to persons licensed as real estate brokers or salespersons in other states and territories, in addition to persons who satisfy the requirements specified under current law. Under the bill, DRL may, after consulting

with the board, enter into reciprocal agreements with officials of other states or territories for granting licenses to persons licensed in those states or territories.

COMPREHENSIVE PLANNING BY LOCAL GOVERNMENTAL UNITS

Under the current law popularly known as the "Smart Growth" statute, if a local governmental unit (city, village, town, county, or regional planning commission) creates a comprehensive plan (a zoning development plan or a zoning master plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use.

Beginning on January 1, 2010, under Smart Growth, any program or action of a local governmental unit that affects land use must be consistent with that local governmental unit's comprehensive plan. The actions to which this requirement applies include zoning ordinances, municipal incorporation procedures, annexation procedures, agricultural preservation plans, and impact fee ordinances. Also beginning on January 1, 2010, under Smart Growth, if a local governmental unit engages in any program or action that affects land use, the comprehensive plan must contain at least all of the required planning elements.

Before the plan may take effect, however, a local governmental unit must comply with a number of requirements, such as adopting written procedures that are designed to foster public participation in the preparation of the plan.

Under this bill, before the plan may take effect, a local governmental unit must provide written notice to all owners of property, and leaseholders who have an interest in property pursuant to which the persons may extract nonmetallic mineral resources, in which the allowable use or intensity of use, of the property, is changed by the comprehensive plan, and must create written procedures that describe the methods the local governmental unit will use to distribute elements of a comprehensive plan to owners of, and other persons who have such interests in, such property.

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

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

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

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

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

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

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

221.0901 **(3)** (a) 1. Merge or consolidate with an in–state bank holding company or in–state bank.

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

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

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

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

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

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

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

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

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

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

Emery, Lynn

From: Nowak, Ellen
Sent: Monday, January 05, 2004 1:37 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3932/1 Topic: Acquisitions of in-state banks and bank holding companies

It has been requested by <Nowak, Ellen> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3932/1 Topic: Acquisitions of in-state banks and bank holding companies