

**2017 DRAFTING REQUEST****Bill**

For: **Terry Katsma (608) 266-0656** Drafter: **agary**  
 By: **Nick** Secondary Drafters: **kpleviak**  
 Date: **11/21/2017** May Contact:  
 Same as LRB: **-5079**

Submit via email: **YES**  
 Requester's email: **Rep.Katsma@legis.wisconsin.gov**  
 Carbon copy (CC) to: **aaron.gary@legis.wisconsin.gov**  
**krista.pleviak@legis.wisconsin.gov**  
**michael.duchek@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**  
**Aaron.McKean@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Disclosure by DFI of examination information and reports to Federal Home Loan Banks; periodic examinations; loan limitations; mortgage loan escrow account interest; public depositories; bank capital; insurance liquidation proceedings; FLSA rule

**Instructions:**

Redraft LRB-3555/2 under new LRB number with one change: in bill section 3 and other related sections, require the financial institution to consent to furnishing the report or info to the FHLB

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	agary 11/21/2017	eweiss 11/22/2017			
/P1	agary 11/29/2017	eweiss 11/29/2017	mbarman 11/22/2017		
/P2	agary	jdyer	dwalker		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	11/30/2017	11/30/2017	11/29/2017		
/1	agary 12/13/2017	aernstr 12/14/2017	dwalker 11/30/2017		
/2	agary 12/14/2017	eweiss 12/14/2017	jdyer 12/14/2017		
/3			lparisi 12/14/2017	dwalker 12/14/2017	

FE Sent For:

Not  
Needed

<END>

# "RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...



## DRAFTING ATTORNEYS:

PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: ARG) (Date: 11 / 21 / 2017)

*Note: BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR" (exception: companion bills)*



Please transfer the drafting file for

2015 LRB

(For: Rep. / Sen. \_\_\_\_\_)

to the drafting file for

2017 LRB

(For: Rep. / Sen. \_\_\_\_\_)

*Don't*

- - - OR - - -



Please copy the drafting file for

2017 LRB

- 3555 / 2

(include the version)

(For: Rep. / Sen. \_\_\_\_\_)

Katsuma

and place it in the drafting file for

2017 LRB

- 4902

(For: Rep. / Sen. \_\_\_\_\_)

Katsuma



Are These "Companion Bills" ?? ...

Yes

No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: \_\_\_\_\_



State of Wisconsin  
2017 - 2018 LEGISLATURE

in 11/21  
w/anted  
wed.  
11/22  
A.M.  
ASAP  
The MSB

- 4902/P1  
LRB-~~2017~~2  
ARG&KRP:emw

2017 BILL

1 AN ACT to renumber and amend 645.46 (11); to amend 34.07, 138.052 (5) (am)  
2 1., 186.235 (16) (a), 214.54 (1), 214.54 (2), 214.725 (3) (intro.), 215.03 (2) (a),  
3 220.04 (1) (a), 220.06 (1m) and 223.105 (3) (a); and to create 186.235 (7) (b) 4.,  
4 214.725 (3m), 214.755 (1) (f), 215.02 (6) (a) 7., 221.0328 (4), 645.05 (3), 645.46  
5 (11) (b) and 645.54 (1) (b) 3. of the statutes; relating to: confidentiality of  
6 financial institution information maintained by the Department of Financial  
7 Institutions; periodic examinations of financial institutions; savings bank loan  
8 limitations; interest on residential mortgage loan escrow accounts; capital of  
9 state banks; security provided by public depositories; insurance company  
10 liquidation proceedings; and modifying an administrative rule of the  
11 Department of Workforce Development related to an exemption from overtime  
12 pay requirements for outside salespersons.

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*Analysis by the Legislative Reference Bureau*

This bill allows the Division of Banking (division) and the Office of Credit Unions (OCU) in the Department of Financial Institutions to disclose certain

**BILL**

financial institution information to a Federal Home Loan Bank and to accept and rely on information collected by other agencies or independent third parties in conducting financial institution examinations. The bill also increases the limit on loans by a savings bank to a single person. The bill eliminates the requirement that financial institutions and mortgage bankers pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the bill. The bill also specifies that the security that may be provided by a public depository to secure the repayment of public deposits includes an irrevocable letter of credit issued by a Federal Home Loan Bank or financial institution. The bill further allows a state bank, with approval of the division, to reduce its capital and distribute cash or other assets to its shareholders. The bill also includes provisions applicable to collateral and other security interests of Federal Home Loan Banks in insurance company liquidation proceedings. Finally, the bill modifies an administrative rule of the Department of Workforce Development to conform the rule to a similar provision under the federal Fair Labor Standards Act (FLSA).

***Disclosure of information to Federal Home Loan Bank***

Under current law, the division regulates state banks, savings banks, and savings and loan associations and OCU regulates state credit unions (collectively, financial institutions), and this regulation includes periodic examinations of these financial institutions by, and reports from these financial institutions to, the division or OCU. Current law generally requires the division and OCU to maintain the confidentiality of examination information and of reports provided to the division or OCU. However, limited exceptions allow disclosure under certain circumstances, including disclosure to state regulatory authorities and to the Federal Deposit Insurance Corporation or National Credit Union Administration.

This bill allows the division or OCU to furnish to a Federal Home Loan Bank, upon request, a copy of any examination report made by, or other supervisory information possessed by, the division or OCU if the Federal Home Loan Bank agrees to treat the information confidentially.

***Periodic examinations of financial institutions***

With exceptions, current law requires the division and OCU to examine the records and affairs of financial institutions under their respective jurisdictions at least once every 18 months.

Under this bill, in conducting these periodic examinations, the division and OCU may accept and rely on information collected by other agencies or independent third parties in determining whether a financial institution has satisfied any requirement that is part of the examination.

***Limit on savings bank loans to one borrower***

Under current law, with exceptions, a savings bank may not make loans to a single person totaling more than 15 percent of the savings bank's capital.

This bill increases this limit to 20 percent.

***Interest on residential mortgage loan escrow accounts***

Under current law, subject to certain exceptions, a financial institution or mortgage banker that originates a residential mortgage loan and requires an escrow

insert  
rule

**BILL**

to assure the payment of taxes or insurance must pay interest on the outstanding principal balance of the escrow at the following annual rate: 1) if the loan was originated between February 1, 1984, and December 31, 1993, not less than 5.25 percent; or 2) if the loan was originated on or after January 1, 1994, a variable rate calculated annually by the division and OCU using the average interest rate paid on passbook accounts.

Under this bill, financial institutions and mortgage bankers are not required to pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the bill.

***Security for public deposits***

Under current law, the Investment Board and the governing bodies of counties, municipalities, and certain other local governmental units (collectively, public depositors) must designate one or more federal or state credit unions, federal or state savings and loan associations, state banks, savings and trust companies, federal or state savings banks, or national banks in this state (public depositories) for deposit of all public moneys received by the public depositor. The public depositor must specify whether security is required of the public depository to secure the repayment of deposits exceeding deposit insurance.

This bill specifies that the security that may be provided by a public depository includes an irrevocable letter of credit issued by a Federal Home Loan Bank, state bank, national bank, federal or state savings bank, federal or state credit union, or federal or state savings and loan association.

***Capital reduction by state banks***

Current law requires the division, immediately following a state bank's organization, to determine the required capital of the bank, including the required capital stock. "Capital stock" means the bank's stock other than preferred stock, and "capital" includes the bank's capital stock, preferred stock, surplus, and undivided profits. Subject to certain requirements and limitations, a bank's board of directors may declare and pay a dividend from its undivided profits, but the bank's dividends may not impair or diminish the bank's capital except to reduce undivided profits.

This bill provides that, with approval of the division, a state bank may, by vote of its shareholders, reduce its capital and distribute cash or other assets to its shareholders.

***Insurance company liquidation proceedings***

Current law contains various provisions applicable in a proceeding brought by the commissioner of insurance for the liquidation or rehabilitation of an insurer. Any receiver, liquidator, or rehabilitator appointed in such a proceeding may seek and obtain from a court a restraining order or injunction to prevent specified conduct by the insurer, including its transaction of business, transfer of property, or wasting of assets.

This bill specifies that a Federal Home Loan Bank may not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement or similar arrangement.

Current law provides certain powers for the liquidator in a liquidation proceeding, including the power to enter into contracts as necessary to carry out the

**BILL**

liquidation and the power to affirm or disavow any contracts to which the insurer is a party. Also in a liquidation proceeding, if one of the specified conditions is met, a liquidator may avoid a preference and recover property or its value. A "preference" is a transfer of an insurer's property to or for the benefit of a creditor based on a preexisting debt if the transfer is made within one year before the liquidation petition and the transfer's effect is to enable the creditor to obtain a greater percentage of his or her debt than another creditor of the same class.

This bill provides that a liquidator does not have the power to disavow any Federal Home Loan Bank security agreement or similar arrangement, and may not avoid any transfer of money or property in connection with any Federal Home Loan Bank security agreement or similar arrangement, except that a transfer may be avoided if it was made with actual intent to hinder, delay, or defraud creditors.

***Exemption from overtime pay requirements for outside salespersons***

The FLSA currently provides an exemption from the minimum wage and overtime pay provisions of the FLSA for employees employed as outside salespersons, as defined under the Code of Federal Regulations. Rules promulgated by DWD currently provide an exemption from state overtime pay provisions for outside salespersons who spend 80 percent of their time away from the employer's place of business.

The bill modifies the administrative rule provision to conform the state exemption for outside salespersons to the exemption under the FLSA. Specifically, the bill provides that the state exemption applies to an employee 1) whose primary duty is either making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer, and 2) who is customarily and regularly engaged away from the employer's place of business in performing that primary duty.

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

1           **SECTION 1.** 34.07 of the statutes is amended to read:  
 2           **34.07 Security.** A surety bond or other security, including an irrevocable letter  
 3 of credit issued by a federal home loan bank, state bank, national bank, federal or  
 4 state savings bank, federal or state credit union, or federal or state savings and loan  
 5 association, may be required of or given by any public depository for any public  
 6 deposits that exceed the amount of deposit insurance provided by an agency of the  
 7 United States and the coverage provided under s. 34.08 (2).

8           **SECTION 2.** 138.052 (5) (am) 1. of the statutes is amended to read:

**BILL**

1           138.052 (5) (am) 1. Except as provided in par. (b) and unless the escrow funds  
 2           are held by a 3rd party in a noninterest-bearing account, a bank, credit union,  
 3           savings bank, savings and loan association or mortgage banker which originates a  
 4           loan on or after January 1, 1994, and before the effective date of this subdivision ...  
 5           [LRB inserts date], or a loan subject to subd. 3., and which requires an escrow to  
 6           assure the payment of taxes or insurance shall pay interest on the outstanding  
 7           principal balance of the escrow at the variable interest rate established under subd.  
 8           2.

9           **SECTION 3.** 186.235 (7) (b) 4. of the statutes is created to read:

10           186.235 (7) (b) 4. Furnish to a federal home loan bank, upon request, a copy of  
 11           any examination report made by, or other supervisory information possessed by, the  
 12           office of credit unions of any credit union, if the federal home loan bank agrees to treat  
 13           the information received under this subdivision with the same degree of  
 14           confidentiality that is required of employees of the office of credit unions under par.

Insert  
5-15

15           (a).

16           **SECTION 4.** 186.235 (16) (a) of the statutes is amended to read:

17           186.235 (16) (a) Except as provided in par. (b), at least once every 18 months,  
 18           the office of credit unions shall examine the records and accounts of each credit  
 19           union. For that purpose the office of credit unions shall have full access to, and may  
 20           compel the production of, each credit union's records and accounts. The office of  
 21           credit unions may administer oaths to and examine each credit union's officers and  
 22           agents. In conducting examinations under this paragraph, the office of credit unions  
 23           may accept and rely on information collected by other agencies or independent 3rd  
 24           parties in determining whether a credit union has satisfied any requirement that is  
 25           part of the examination.



**BILL**

1           **SECTION 5.** 214.54 (1) of the statutes is amended to read:

2           214.54 (1) Except as provided in sub. (2) and s. 214.49 (4), the total of  
3 outstanding loans and extensions of credit, both direct and indirect, made by a  
4 savings bank to a single person shall be subject to limits established by rule of the  
5 division, but may not exceed 15 20 percent of the savings bank's capital.

6           **SECTION 6.** 214.54 (2) of the statutes is amended to read:

7           214.54 (2) Total outstanding loans and extensions of credit, both direct and  
8 indirect, made by a savings bank to a single person may exceed the 15 20 percent  
9 limit under sub. (1), but may not exceed 25 percent of the savings bank's capital, if  
10 all loans or extensions of credit that exceed the 15 20 percent limit are at least 100  
11 percent secured by readily marketable collateral having a market value that may be  
12 determined by reliable and continuously available price quotations.

13           **SECTION 7.** 214.725 (3) (intro.) of the statutes is amended to read:

14           214.725 (3) (intro.) ~~An~~ Subject to sub. (3m), an examination shall include a  
15 review of all of the following:

16           **SECTION 8.** 214.725 (3m) of the statutes is created to read:

17           214.725 (3m) In conducting examinations under sub. (1) (a), the division may  
18 accept and rely on information collected by other agencies or independent 3rd parties  
19 in determining whether a savings bank has satisfied any requirement that is part  
20 of the examination.

21           **SECTION 9.** 214.755 (1) (f) of the statutes is created to read:

22           214.755 (1) (f) A federal home loan bank if the federal home loan bank agrees  
23 to keep the information confidential.

24           **SECTION 10.** 215.02 (6) (a) 7. of the statutes is created to read:

insert  
6-23

**BILL**

Insert  
7-4

1           215.02 (6) (a) 7. The division may furnish to a federal home loan bank a copy  
2 of any examination report made by, or other supervisory information possessed by,  
3 the division of any association if the federal home loan bank agrees to keep the  
(4) examination report or other information confidential.

5           **SECTION 11.** 215.03 (2) (a) of the statutes is amended to read:

6           215.03 (2) (a) Except as provided in par. (b), at least once within every  
7 18-month period, the division shall examine the cash, bills, collaterals, securities,  
8 assets, books of account, condition and affairs of all such associations and for that  
9 purpose the division or the division's examiners shall have access to, and may compel  
10 the production of, all their books, papers, securities and moneys, administer oaths  
11 to and examine their officers and agents as to their affairs. In conducting  
12 examinations under this paragraph, the division may accept and rely on information  
13 collected by other agencies or independent 3rd parties in determining whether an  
14 association has satisfied any requirement that is part of the examination. An  
15 employee of the division may not examine an association in which the employee is  
16 interested as an officer or director.

17           **SECTION 12.** 220.04 (1) (a) of the statutes is amended to read:

18           220.04 (1) (a) The division shall examine at least once every 18 months the  
19 cash, bills, collaterals, securities, assets, books of account, condition and affairs of  
20 each bank and trust company bank doing business in this state, except national  
21 banks. For that purpose the division may examine on oath any of the officers, agents,  
22 directors, clerks, stockholders, customers or depositors thereof, touching the affairs  
23 and business of such institution. In conducting examinations under this paragraph,  
24 the division may accept and rely on information collected by other agencies or  
25 independent 3rd parties in determining whether a bank or trust company bank has

**BILL**

1 satisfied any requirement that is part of the examination. In making such  
2 examinations of banks, the division shall determine the fair valuation of all assets  
3 in accordance with the schedules, rules and regulations prescribed by the banking  
4 review board.

5 **SECTION 13.** 220.06 (1m) of the statutes is amended to read:

6 220.06 (1m) No division employee may examine a bank or licensee in which  
7 that person is interested as a stockholder, officer or employee. No division employee  
8 may examine a bank or licensee located in the same village, city or county with any  
9 bank or licensee in which that person is so interested. Employees in the division, and  
10 each member and employee of the banking review board, shall keep secret all facts  
11 and information obtained in the course of examinations or from reports not under s.  
12 221.1002 (1) filed by a bank or licensee with the division, except so far as the public  
13 duty of the person requires reporting upon or taking special action regarding the  
14 affairs of any bank or licensee, and except when called as a witness in any criminal  
15 proceeding or trial in a court of justice. The division may furnish to the federal

16 deposit insurance corporation, to a federal home loan bank, or to any regulatory  
17 authority for state or federal financial institutions, insurance or securities a copy of  
18 any examination made of any such bank or licensee or of any report made by such  
19 bank or licensee and may give access to and disclose to the corporation, to a federal

20 home loan bank, or to any regulatory authority for state or federal financial  
21 institutions, insurance or securities any information possessed by the division with  
22 reference to the conditions or affairs of any such insured bank or licensee if the  
23 regulatory authority agrees to treat all information received with the same degree  
24 of confidentiality as applies to reports of examination that are in the custody of the  
25 division.

upon consent of the bank or licensee

**BILL**

1           **SECTION 14.** 221.0328 (4) of the statutes is created to read:

2           221.0328 (4) REDUCTION OF CAPITAL. Subject to the approval of the division, and  
3 subject to ss. 221.0211 (4) and 221.0323 (1) and (2), a bank may, by a vote of  
4 shareholders owning, in the aggregate, at least two-thirds of its capital stock, reduce  
5 its capital. Notwithstanding sub. (2) and subject to ss. 221.0216 (5) and 221.0327,  
6 as part of its capital reduction plan approved by the division in accordance with this  
7 subsection, and with the affirmative vote of shareholders owning at least two-thirds  
8 of the shares of each class of its stock outstanding, a bank may distribute cash or  
9 other assets to its shareholders.

10           **SECTION 15.** 223.105 (3) (a) of the statutes is amended to read:

11           223.105 (3) (a) To assure compliance with such rules as may be established  
12 under s. 220.04 (7), the division of banking and the office of credit unions shall, at  
13 least once every 18 months, examine the fiduciary operations of each organization  
14 which is under its respective jurisdiction and is subject to examination under sub.  
15 (2). If a particular organization subject to examination under sub. (2) is not  
16 otherwise under the jurisdiction of one of the foregoing agencies, such examination  
17 shall be conducted by the division of banking. In conducting examinations under this  
18 paragraph, the division of banking or office of credit unions may accept and rely on  
19 information collected by other agencies or independent 3rd parties in determining  
20 whether an organization has satisfied any requirement that is part of the  
21 examination.

22           **SECTION 16.** 645.05 (3) of the statutes is created to read:

23           645.05 (3) NO INJUNCTION AGAINST A FEDERAL HOME LOAN BANK. Notwithstanding  
24 subs. (1) and (2) and any other provision of this chapter, no federal home loan bank  
25 may be stayed, enjoined, or prohibited from exercising or enforcing any right or cause

**BILL****SECTION 16**

1 of action regarding collateral pledged under any security agreement, or any pledge,  
2 security, collateral, or guarantee agreement, or any other similar arrangement or  
3 credit enhancement relating to a federal home loan bank security agreement.

4 **SECTION 17.** 645.46 (11) of the statutes is renumbered 645.46 (11) (a) and  
5 amended to read:

6 645.46 (11) (a) ~~Enter~~ Subject to par. (b), enter into such contracts as are  
7 necessary to carry out the order to liquidate, and affirm or disavow any contracts to  
8 which the insurer is a party.

9 **SECTION 18.** 645.46 (11) (b) of the statutes is created to read:

10 645.46 (11) (b) Notwithstanding any other provision of this chapter, no  
11 liquidator has the power to disavow any federal home loan bank security agreement,  
12 or any pledge, security, collateral, or guarantee agreement, or any other similar  
13 arrangement or credit enhancement relating to a federal home loan bank security  
14 agreement.

15 **SECTION 19.** 645.54 (1) (b) 3. of the statutes is created to read:

16 645.54 (1) (b) 3. Notwithstanding any other provision of this chapter, no  
17 liquidator may avoid any transfer of, or any obligation to transfer, money or any other  
18 property arising under or in connection with any federal home loan bank security  
19 agreement, or any pledge, security, collateral, or guarantee agreement, or any other  
20 similar arrangement or credit enhancement relating to a federal home loan bank  
21 security agreement. However, a transfer may be avoided under this paragraph if it  
22 was made with actual intent to hinder, delay, or defraud either existing or future  
23 creditors.

24 **SECTION 20.** DWD 274.04 (2) of the administrative code is repealed and  
25 recreated to read:

**BILL**

1 DWD 274.04 (2) An employee who meets all of the following conditions:

2 (a) The employee's primary duty, as determined under 29 CFR 541.500 (b), is  
3 any of the following:

4 1. Making sales, as defined under 29 USC 203 (k).

5 2. Obtaining orders or contracts for services or for the use of facilities for which  
6 a consideration will be paid by the client or customer.

7 (b) The employee is customarily and regularly engaged away from the  
8 employer's place of business, as described under 29 CFR 541.502, in performing the  
9 employee's primary duty described under par. (a).

10 **SECTION 21. Effective dates.** This act takes effect on the day after publication,  
11 except as follows:

12 (1) The treatment of section DWD 274.04 (2) of the administrative code takes  
13 effect as provided in section 227.265 of the statutes.

14 (END)

2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4902/P1ins  
ARG:...

1

2 **INSERT ANAL:**

3 (no P) and if the financial institution to which the information pertains consents to the ✓  
4 disclosure

3

4

5 **INSERT 5-15:**

6 (no P) and if the credit union to which the report or information pertains consents to ✓  
7 the disclosure

8 **INSERT 6-23:**

9 (no P) and if the savings bank to which the information pertains consents to the ✓  
10 disclosure

11 **INSERT 7-4:**

12 (no P) and if the association to which the report or information pertains consents to ✓  
13 the disclosure

14

## Gary, Aaron

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**From:** Krueger, Nick  
**Sent:** Tuesday, November 28, 2017 2:44 PM  
**To:** Gary, Aaron  
**Subject:** RE: Edits to LRB-4902/P1

Good question, Aaron, thanks. Let's go with Option #1. I'm pretty sure that will satisfy the need without creating any new burden for any agency, etc.

Nick

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**From:** Gary, Aaron  
**Sent:** Tuesday, November 28, 2017 2:34 PM  
**To:** Krueger, Nick <Nick.Krueger@legis.wisconsin.gov>  
**Subject:** RE: Edits to LRB-4902/P1

Hi Nick,

Hope you had a nice Thanksgiving too.

Taking credit unions as an example: Would the credit union be given notice and then a chance to opt out? Looking at p. 5, line 18-19 of LRB-4902/P1, a few options would be:

1. Lines 18-19 could read something like: "and if the credit union to which the report or information pertains has not objected, in writing, to the disclosure."  
OR
2. Lines 18-19 could read something like this: "and if the credit union to which the report or information pertains has not made a written objection to the disclosure after being given [at least 5 days'] notice of the intended disclosure." [brackets mean optional language]  
OR
3. Lines 18-19 could read something like this: "and if the credit union to which the report or information pertains has not filed an objection to the disclosure under s. \_\_\_\_." [This option would then include the creation of another provision under which the Office of Credit Unions would create a form for a credit union to make a general objection to disclosure to the FHLB, which form would then be filed with the Office.]

Do any of these work or, if not, what would be the process for opting out?

I'm leaving now for a meeting but will be back later in the day (and tomorrow).

Thanks. Aaron

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**From:** Krueger, Nick  
**Sent:** Tuesday, November 28, 2017 1:30 PM  
**To:** Gary, Aaron <Aaron.Gary@legis.wisconsin.gov>  
**Subject:** Edits to LRB-4902/P1

Hi Aaron—hope you had a blessed Thanksgiving!



Got one more request for you, please, regarding LRB-4902/P1. You did a great job delivering exactly what I asked for in the P1 draft—as I had requested, the P1 draft provides that DFI may furnish examination reports, etc. to FHLB so long as the financial institution in question consents to the disclosure.

Instead, however, Rep. Katsma wants to flip that around. We want statute to provide that DFI may furnish info to FHLB unless the financial institution gives written notice to DFI *opting out* of the sharing. (We understand that P1, as written, essentially requires a financial institution to *opt in* to the sharing.)

Please create a P2 draft for us accordingly. I should be at my desk this afternoon if you have questions.

Thank you!

**Nick Krueger**

Office of Representative Terry Katsma

Wisconsin State Assembly

Room 208 North, State Capitol

P.O. Box 8952

Madison, WI 53708

(608) 266-0656 (office)

[www.repkatsma.com](http://www.repkatsma.com)

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**From:** LRB.Legal

**Sent:** Wednesday, November 22, 2017 7:35 AM

**To:** Rep.Katsma <[Rep.Katsma@legis.wisconsin.gov](mailto:Rep.Katsma@legis.wisconsin.gov)>

**Subject:** Draft review: LRB -4902/P1

**Following is the PDF version of draft LRB -4902/P1.**



Today

in  
11/29

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to renumber and amend* 645.46 (11); *to amend* 34.07, 138.052 (5) (am)  
2             1., 186.235 (16) (a), 214.54 (1), 214.54 (2), 214.725 (3) (intro.), 215.03 (2) (a),  
3             220.04 (1) (a), 220.06 (1m) and 223.105 (3) (a); and **to create** 186.235 (7) (b) 4.,  
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6             financial institution information maintained by the Department of Financial  
7             Institutions; periodic examinations of financial institutions; savings bank loan  
8             limitations; interest on residential mortgage loan escrow accounts; capital of  
9             state banks; security provided by public depositories; insurance company  
10            liquidation proceedings; and modifying an administrative rule of the  
11            Department of Workforce Development related to an exemption from overtime  
12            pay requirements for outside salespersons.

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***Analysis by the Legislative Reference Bureau***

This bill allows the Division of Banking (division) and the Office of Credit Unions (OCU) in the Department of Financial Institutions to disclose certain

financial institution information to a Federal Home Loan Bank and to accept and rely on information collected by other agencies or independent third parties in conducting financial institution examinations. The bill also increases the limit on loans by a savings bank to a single person. The bill eliminates the requirement that financial institutions and mortgage bankers pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the bill. The bill also specifies that the security that may be provided by a public depository to secure the repayment of public deposits includes an irrevocable letter of credit issued by a Federal Home Loan Bank or financial institution. The bill further allows a state bank, with approval of the division, to reduce its capital and distribute cash or other assets to its shareholders. The bill also includes provisions applicable to collateral and other security interests of Federal Home Loan Banks in insurance company liquidation proceedings. Finally, the bill modifies an administrative rule of the Department of Workforce Development to conform the rule to a similar provision under the federal Fair Labor Standards Act (FLSA).

***Disclosure of information to Federal Home Loan Bank***

Under current law, the division regulates state banks, savings banks, and savings and loan associations and OCU regulates state credit unions (collectively, financial institutions), and this regulation includes periodic examinations of these financial institutions by, and reports from these financial institutions to, the division or OCU. Current law generally requires the division and OCU to maintain the confidentiality of examination information and of reports provided to the division or OCU. However, limited exceptions allow disclosure under certain circumstances, including disclosure to state regulatory authorities and to the Federal Deposit Insurance Corporation or National Credit Union Administration.

This bill allows the division or OCU to furnish to a Federal Home Loan Bank, upon request, a copy of any examination report made by, or other supervisory information possessed by, the division or OCU if the Federal Home Loan Bank agrees to treat the information confidentially and if the financial institution to which the information pertains consents to the disclosure.

*has not objected, in writing,*

***Periodic examinations of financial institutions***

With exceptions, current law requires the division and OCU to examine the records and affairs of financial institutions under their respective jurisdictions at least once every 18 months.

Under this bill, in conducting these periodic examinations, the division and OCU may accept and rely on information collected by other agencies or independent third parties in determining whether a financial institution has satisfied any requirement that is part of the examination.

***Limit on savings bank loans to one borrower***

Under current law, with exceptions, a savings bank may not make loans to a single person totaling more than 15 percent of the savings bank's capital.

This bill increases this limit to 20 percent.

***Interest on residential mortgage loan escrow accounts***

Under current law, subject to certain exceptions, a financial institution or mortgage banker that originates a residential mortgage loan and requires an escrow to assure the payment of taxes or insurance must pay interest on the outstanding principal balance of the escrow at the following annual rate: 1) if the loan was originated between February 1, 1984, and December 31, 1993, not less than 5.25 percent; or 2) if the loan was originated on or after January 1, 1994, a variable rate calculated annually by the division and OCU using the average interest rate paid on passbook accounts.

Under this bill, financial institutions and mortgage bankers are not required to pay interest on escrow accounts for residential mortgage loans originated on or after the effective date of the bill.

***Security for public deposits***

Under current law, the Investment Board and the governing bodies of counties, municipalities, and certain other local governmental units (collectively, public depositories) must designate one or more federal or state credit unions, federal or state savings and loan associations, state banks, savings and trust companies, federal or state savings banks, or national banks in this state (public depositories) for deposit of all public moneys received by the public depositor. The public depositor must specify whether security is required of the public depository to secure the repayment of deposits exceeding deposit insurance.

This bill specifies that the security that may be provided by a public depository includes an irrevocable letter of credit issued by a Federal Home Loan Bank, state bank, national bank, federal or state savings bank, federal or state credit union, or federal or state savings and loan association.

***Capital reduction by state banks***

Current law requires the division, immediately following a state bank's organization, to determine the required capital of the bank, including the required capital stock. "Capital stock" means the bank's stock other than preferred stock, and "capital" includes the bank's capital stock, preferred stock, surplus, and undivided profits. Subject to certain requirements and limitations, a bank's board of directors may declare and pay a dividend from its undivided profits, but the bank's dividends may not impair or diminish the bank's capital except to reduce undivided profits.

This bill provides that, with approval of the division, a state bank may, by vote of its shareholders, reduce its capital and distribute cash or other assets to its shareholders.

***Insurance company liquidation proceedings***

Current law contains various provisions applicable in a proceeding brought by the commissioner of insurance for the liquidation or rehabilitation of an insurer. Any receiver, liquidator, or rehabilitator appointed in such a proceeding may seek and obtain from a court a restraining order or injunction to prevent specified conduct by the insurer, including its transaction of business, transfer of property, or wasting of assets.

This bill specifies that a Federal Home Loan Bank may not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement or similar arrangement.

Current law provides certain powers for the liquidator in a liquidation proceeding, including the power to enter into contracts as necessary to carry out the liquidation and the power to affirm or disavow any contracts to which the insurer is a party. Also in a liquidation proceeding, if one of the specified conditions is met, a liquidator may avoid a preference and recover property or its value. A "preference" is a transfer of an insurer's property to or for the benefit of a creditor based on a preexisting debt if the transfer is made within one year before the liquidation petition and the transfer's effect is to enable the creditor to obtain a greater percentage of his or her debt than another creditor of the same class.

This bill provides that a liquidator does not have the power to disavow any Federal Home Loan Bank security agreement or similar arrangement, and may not avoid any transfer of money or property in connection with any Federal Home Loan Bank security agreement or similar arrangement, except that a transfer may be avoided if it was made with actual intent to hinder, delay, or defraud creditors.

***Exemption from overtime pay requirements for outside salespersons***

The FLSA currently provides an exemption from the minimum wage and overtime pay provisions of the FLSA for employees employed as outside salespersons, as defined under the Code of Federal Regulations. Rules promulgated by DWD currently provide an exemption from state overtime pay provisions for outside salespersons who spend 80 percent of their time away from the employer's place of business.

The bill modifies the administrative rule provision to conform the state exemption for outside salespersons to the exemption under the FLSA. Specifically, the bill provides that the state exemption applies to an employee 1) whose primary duty is either making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer, and 2) who is customarily and regularly engaged away from the employer's place of business in performing that primary duty.

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

- 1           **SECTION 1.** 34.07 of the statutes is amended to read:
- 2           **34.07 Security.** A surety bond or other security, including an irrevocable letter
- 3 of credit issued by a federal home loan bank, state bank, national bank, federal or
- 4 state savings bank, federal or state credit union, or federal or state savings and loan
- 5 association, may be required of or given by any public depository for any public

1 deposits that exceed the amount of deposit insurance provided by an agency of the  
2 United States and the coverage provided under s. 34.08 (2).

3 **SECTION 2.** 138.052 (5) (am) 1. of the statutes is amended to read:

4 138.052 (5) (am) 1. Except as provided in par. (b) and unless the escrow funds  
5 are held by a 3rd party in a noninterest-bearing account, a bank, credit union,  
6 savings bank, savings and loan association or mortgage banker which originates a  
7 loan on or after January 1, 1994, and before the effective date of this subdivision ....  
8 [LRB inserts date], or a loan subject to subd. 3., and which requires an escrow to  
9 assure the payment of taxes or insurance shall pay interest on the outstanding  
10 principal balance of the escrow at the variable interest rate established under subd.  
11 2.

12 **SECTION 3.** 186.235 (7) (b) 4. of the statutes is created to read:

13 186.235 (7) (b) 4. Furnish to a federal home loan bank, upon request, a copy of  
14 any examination report made by, or other supervisory information possessed by, the  
15 office of credit unions of any credit union, if the federal home loan bank agrees to treat  
16 the information received under this subdivision with the same degree of  
17 confidentiality that is required of employees of the office of credit unions under par.

18 (a) and if the credit union to which the report or information pertains consents to the  
19 disclosure. *has not objected, in writing,*

20 **SECTION 4.** 186.235 (16) (a) of the statutes is amended to read:

21 186.235 (16) (a) Except as provided in par. (b), at least once every 18 months,  
22 the office of credit unions shall examine the records and accounts of each credit  
23 union. For that purpose the office of credit unions shall have full access to, and may  
24 compel the production of, each credit union's records and accounts. The office of  
25 credit unions may administer oaths to and examine each credit union's officers and

**SECTION 4**

1 agents. In conducting examinations under this paragraph, the office of credit unions  
2 may accept and rely on information collected by other agencies or independent 3rd  
3 parties in determining whether a credit union has satisfied any requirement that is  
4 part of the examination.

5 **SECTION 5.** 214.54 (1) of the statutes is amended to read:

6 214.54 (1) Except as provided in sub. (2) and s. 214.49 (4), the total of  
7 outstanding loans and extensions of credit, both direct and indirect, made by a  
8 savings bank to a single person shall be subject to limits established by rule of the  
9 division, but may not exceed ~~15~~ 20 percent of the savings bank's capital.

10 **SECTION 6.** 214.54 (2) of the statutes is amended to read:

11 214.54 (2) Total outstanding loans and extensions of credit, both direct and  
12 indirect, made by a savings bank to a single person may exceed the ~~15~~ 20 percent  
13 limit under sub. (1), but may not exceed 25 percent of the savings bank's capital, if  
14 all loans or extensions of credit that exceed the ~~15~~ 20 percent limit are at least 100  
15 percent secured by readily marketable collateral having a market value that may be  
16 determined by reliable and continuously available price quotations.

17 **SECTION 7.** 214.725 (3) (intro.) of the statutes is amended to read:

18 214.725 (3) (intro.) An Subject to sub. (3m), an examination shall include a  
19 review of all of the following:

20 **SECTION 8.** 214.725 (3m) of the statutes is created to read:

21 214.725 (3m) In conducting examinations under sub. (1) (a), the division may  
22 accept and rely on information collected by other agencies or independent 3rd parties  
23 in determining whether a savings bank has satisfied any requirement that is part  
24 of the examination.

25 **SECTION 9.** 214.755 (1) (f) of the statutes is created to read:

1           214.755 (1) (f) A federal home loan bank if the federal home loan bank agrees  
2 to keep the information confidential and if the savings bank to which the information  
3 pertains ~~consents~~ to the disclosure. *has not objected, in writing,*

4           **SECTION 10.** 215.02 (6) (a) 7. of the statutes is created to read:

5           215.02 (6) (a) 7. The division may furnish to a federal home loan bank a copy  
6 of any examination report made by, or other supervisory information possessed by,  
7 the division of any association if the federal home loan bank agrees to keep the  
8 examination report or other information confidential and if the association to which  
9 the report or information pertains ~~consents~~ to the disclosure.

10          **SECTION 11.** 215.03 (2) (a) of the statutes is amended to read:

11          215.03 (2) (a) Except as provided in par. (b), at least once within every  
12 18-month period, the division shall examine the cash, bills, collaterals, securities,  
13 assets, books of account, condition and affairs of all such associations and for that  
14 purpose the division or the division's examiners shall have access to, and may compel  
15 the production of, all their books, papers, securities and moneys, administer oaths  
16 to and examine their officers and agents as to their affairs. In conducting  
17 examinations under this paragraph, the division may accept and rely on information  
18 collected by other agencies or independent 3rd parties in determining whether an  
19 association has satisfied any requirement that is part of the examination. An  
20 employee of the division may not examine an association in which the employee is  
21 interested as an officer or director.

22          **SECTION 12.** 220.04 (1) (a) of the statutes is amended to read:

23          220.04 (1) (a) The division shall examine at least once every 18 months the  
24 cash, bills, collaterals, securities, assets, books of account, condition and affairs of  
25 each bank and trust company bank doing business in this state, except national



1 banks. For that purpose the division may examine on oath any of the officers, agents,  
2 directors, clerks, stockholders, customers or depositors thereof, touching the affairs  
3 and business of such institution. In conducting examinations under this paragraph,  
4 the division may accept and rely on information collected by other agencies or  
5 independent 3rd parties in determining whether a bank or trust company bank has  
6 satisfied any requirement that is part of the examination. In making such  
7 examinations of banks, the division shall determine the fair valuation of all assets  
8 in accordance with the schedules, rules and regulations prescribed by the banking  
9 review board.

10 **SECTION 13.** 220.06 (1m) of the statutes is amended to read:

11 220.06 (1m) No division employee may examine a bank or licensee in which  
12 that person is interested as a stockholder, officer or employee. No division employee  
13 may examine a bank or licensee located in the same village, city or county with any  
14 bank or licensee in which that person is so interested. Employees in the division, and  
15 each member and employee of the banking review board, shall keep secret all facts  
16 and information obtained in the course of examinations or from reports not under s.  
17 221.1002 (1) filed by a bank or licensee with the division, except so far as the public  
18 duty of the person requires reporting upon or taking special action regarding the  
19 affairs of any bank or licensee, and except when called as a witness in any criminal  
20 proceeding or trial in a court of justice. The division may furnish to the federal  
21 deposit insurance corporation, to a federal home loan bank <sup>if</sup> upon consent of the bank  
22 or licensee or to any regulatory authority for state or federal financial institutions,  
23 insurance or securities a copy of any examination made of any such bank or licensee  
24 or of any report made by such bank or licensee and may give access to and disclose  
25 to the corporation, to a federal home loan bank <sup>if</sup> upon consent of the bank or licensee,

has not objected in writing

1 or to any regulatory authority for state or federal financial institutions, insurance  
2 or securities any information possessed by the division with reference to the  
3 conditions or affairs of any such insured bank or licensee if the regulatory authority  
4 agrees to treat all information received with the same degree of confidentiality as  
5 applies to reports of examination that are in the custody of the division.

6 **SECTION 14.** 221.0328 (4) of the statutes is created to read:

7 221.0328 (4) REDUCTION OF CAPITAL. Subject to the approval of the division, and  
8 subject to ss. 221.0211 (4) and 221.0323 (1) and (2), a bank may, by a vote of  
9 shareholders owning, in the aggregate, at least two-thirds of its capital stock, reduce  
10 its capital. Notwithstanding sub. (2) and subject to ss. 221.0216 (5) and 221.0327,  
11 as part of its capital reduction plan approved by the division in accordance with this  
12 subsection, and with the affirmative vote of shareholders owning at least two-thirds  
13 of the shares of each class of its stock outstanding, a bank may distribute cash or  
14 other assets to its shareholders.

15 **SECTION 15.** 223.105 (3) (a) of the statutes is amended to read:

16 223.105 (3) (a) To assure compliance with such rules as may be established  
17 under s. 220.04 (7), the division of banking and the office of credit unions shall, at  
18 least once every 18 months, examine the fiduciary operations of each organization  
19 which is under its respective jurisdiction and is subject to examination under sub.  
20 (2). If a particular organization subject to examination under sub. (2) is not  
21 otherwise under the jurisdiction of one of the foregoing agencies, such examination  
22 shall be conducted by the division of banking. In conducting examinations under this  
23 paragraph, the division of banking or office of credit unions may accept and rely on  
24 information collected by other agencies or independent 3rd parties in determining

1 whether an organization has satisfied any requirement that is part of the  
2 examination.

3 **SECTION 16.** 645.05 (3) of the statutes is created to read:

4 645.05 (3) NO INJUNCTION AGAINST A FEDERAL HOME LOAN BANK. Notwithstanding  
5 subs. (1) and (2) and any other provision of this chapter, no federal home loan bank  
6 may be stayed, enjoined, or prohibited from exercising or enforcing any right or cause  
7 of action regarding collateral pledged under any security agreement, or any pledge,  
8 security, collateral, or guarantee agreement, or any other similar arrangement or  
9 credit enhancement relating to a federal home loan bank security agreement.

10 **SECTION 17.** 645.46 (11) of the statutes is renumbered 645.46 (11) (a) and  
11 amended to read:

12 645.46 (11) (a) ~~Enter~~ Subject to par. (b), enter into such contracts as are  
13 necessary to carry out the order to liquidate, and affirm or disavow any contracts to  
14 which the insurer is a party.

15 **SECTION 18.** 645.46 (11) (b) of the statutes is created to read:

16 645.46 (11) (b) Notwithstanding any other provision of this chapter, no  
17 liquidator has the power to disavow any federal home loan bank security agreement,  
18 or any pledge, security, collateral, or guarantee agreement, or any other similar  
19 arrangement or credit enhancement relating to a federal home loan bank security  
20 agreement.

21 **SECTION 19.** 645.54 (1) (b) 3. of the statutes is created to read:

22 645.54 (1) (b) 3. Notwithstanding any other provision of this chapter, no  
23 liquidator may avoid any transfer of, or any obligation to transfer, money or any other  
24 property arising under or in connection with any federal home loan bank security  
25 agreement, or any pledge, security, collateral, or guarantee agreement, or any other

1 similar arrangement or credit enhancement relating to a federal home loan bank  
2 security agreement. However, a transfer may be avoided under this paragraph if it  
3 was made with actual intent to hinder, delay, or defraud either existing or future  
4 creditors.

5 **SECTION 20.** DWD 274.04 (2) of the administrative code is repealed and  
6 recreated to read:

7 DWD 274.04 (2) An employee who meets all of the following conditions:

8 (a) The employee's primary duty, as determined under 29 CFR 541.500 (b), is  
9 any of the following:

10 1. Making sales, as defined under 29 USC 203 (k).

11 2. Obtaining orders or contracts for services or for the use of facilities for which  
12 a consideration will be paid by the client or customer.

13 (b) The employee is customarily and regularly engaged away from the  
14 employer's place of business, as described under 29 CFR 541.502, in performing the  
15 employee's primary duty described under par. (a).

16 **SECTION 21. Effective dates.** This act takes effect on the day after publication,  
17 except as follows:

18 (1) The treatment of section DWD 274.04 (2) of the administrative code takes  
19 effect as provided in section 227.265 of the statutes.

20

(END)

## Gary, Aaron

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**From:** Krueger, Nick  
**Sent:** Thursday, November 30, 2017 8:27 AM  
**To:** Gary, Aaron  
**Cc:** Neville, William  
**Subject:** RE: Draft review: LRB -4902/P2

Good work Aaron, thank you! Please go ahead and send me an introducible /1 draft.

Please also accept this message as Rep. Katsma's permission for Sen. Craig's office (Bill Neville is copied on this email) to request a companion bill from you.

Thank you!

### **Nick Krueger**

Office of Representative Terry Katsma

Wisconsin State Assembly

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**From:** LRB.Legal  
**Sent:** Wednesday, November 29, 2017 11:58 AM  
**To:** Rep.Katsma <Rep.Katsma@legis.wisconsin.gov>  
**Subject:** Draft review: LRB -4902/P2

**Following is the PDF version of draft LRB -4902/P2.**