

# **LEGISLATIVE HEARING CALENDAR**

**Positions to be taken by the City of Milwaukee on the following bills will be discussed by the**

## **COMMITTEE ON JUDICIARY-LEGISLATION**

**MONDAY, NOVEMBER 17, 2003 AT 1:45 P.M.**

**Room 301-B City Hall**

- S-305/A-654 Tax Incremental Financing Program; Technical and Policy Changes
- A-608 Smart Growth
- A-650 Agricultural Land Definition; Property Taxes
- A-655 Job Creation Act of 2003

## 2003 SENATE BILL 305

November 5, 2003 - Introduced by Senators STEPP, KANAVAS, LEIBHAM, DARLING, JAUCH, BROWN, ROESSLER, A. LASEE, SCHULTZ, KEDZIE, S. FITZGERALD, WIRCH, HANSEN, ZIEN and M. MEYER, cosponsored by Representatives M. LEHMAN, WIECKERT, ALBERS, NISCHKE, BALOW, OLSEN, FREESE, BOYLE, KRAWCZYK, HUBER, KREIBICH, HEBL, MUSSER, LOEFFELHOLZ, STEINBRINK, GUNDERSON, HAHN, VAN AKKEREN, F. LASEE, VAN ROY, LADWIG, PETROWSKI, TOWNSEND, OTT, HUNDERTMARK, STONE, LOTHIAN, VRAKAS, MCCORMICK, UNDERHEIM, WEBER, HINES, GOTTLIEB, J. WOOD, JESKEWITZ and GIELOW. Referred to Committee on Economic Development, Job Creation and Housing.

1     **AN ACT to repeal** 66.1105 (2) (f) 3., 66.1105 (4) (h) 3., 66.1105 (6) (a) 3. and 66.1105  
2     (6) (e) 2.; **to amend** 66.1105 (2) (f) 1. i., 66.1105 (4) (e), 66.1105 (4) (gm) 1.,  
3     66.1105 (4) (gm) 4. a., 66.1105 (4) (gm) 4. c., 66.1105 (4) (h) 1., 66.1105 (4) (h) 2.,  
4     66.1105 (4m) (a), 66.1105 (4m) (b) 2., 66.1105 (4m) (b) 2m., 66.1105 (5) (a),  
5     66.1105 (5) (b), 66.1105 (5) (c), 66.1105 (5) (ce), 66.1105 (5) (d), 66.1105 (6) (a)  
6     4., 66.1105 (6) (c), 66.1105 (7) (a), 66.1105 (7) (ar), 66.1105 (8) (title) and 66.1105  
7     (8) (a); **to repeal and recreate** 66.1105 (6) (am) 1. and 66.1105 (7) (am); **to**  
8     **create** 59.57 (3), 66.1105 (2) (cm), 66.1105 (2) (f) 2. d., 66.1105 (3) (g), 66.1105  
9     (4) (gm) 6., 66.1105 (4m) (ae), 66.1105 (4m) (am), 66.1105 (4m) (b) 4., 66.1105  
10    (6) (a) 7., 66.1105 (6) (a) 8., 66.1105 (6) (e) 1. d., 66.1105 (6) (f), 66.1105 (8) (c),  
11    66.1105 (8) (d), 66.1105 (15) and 66.1106 (13) of the statutes; and **to affect** Laws  
12    of 1975, chapter 105, section 1 (1) and (2); **relating to:** making technical and  
13    policy changes in the tax incremental financing program based in part on the  
14    recommendations of the governor's December 2000 working group on tax

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1 incremental finance, authorizing certain counties to create tax incremental  
2 financing districts, and making a modification to the environmental  
3 remediation tax incremental financing program.

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

Under the current tax incremental financing (TIF) program, a city or village may create a tax incremental district (TID) in part of its territory to foster development if at least 50 percent of the area to be included in the TID is blighted, in need of rehabilitation, or suitable for industrial sites. Before a city or village may create a TID, several steps and plans are required. These steps and plans include public hearings on the proposed TID within specified time frames, preparation and adoption by the local planning commission of a proposed project plan for the TID, approval of the proposed project plan by the common council or village board, and adoption of a resolution by the common council or village board that creates the district as of a date provided in the resolution. Another step that must be taken before a TID may be created is the creation by the city or village of a joint review board to review the proposal. The joint review board, which is made up of representatives of the overlying taxing jurisdictions of the proposed TID, must approve the project plan within specified time frames or the TID may not be created. If an existing TID project plan is amended by a planning commission, all of these steps are also required.

Once these steps are accomplished, the city or village clerk is required to complete certain forms and an application and submit the documents to the Department of Revenue (DOR) on or before December 31 of the year in which the TID is created. Upon receipt of the application, DOR is required to determine the full aggregate value of the taxable property, and of certain city or village owned property, that lies within the TID.

Once the aggregate value is determined, DOR certifies the "tax incremental base" of the TID, which is the equalized value of all taxable property within the TID at the time of its creation. If development in the TID increases the value of the property in the TID above the base value, a "value increment" is created. That portion of taxes collected on the value increment is called a "tax increment." The tax increment is placed in a special fund that may only be used to pay back the project costs of the TID. The project costs of a TID, which are initially incurred by the creating city or village, include public works such as sewers, streets, and lighting systems; financing costs; site preparation costs; and professional service costs. DOR authorizes the allocation of the tax increments until the TID terminates or 23 years, or 27 years in certain cases, after the TID is created, whichever is sooner. Under current law, TIDs are required to terminate, with one exception, once these costs are paid back, 16 years, or 20 years in certain cases, after the last expenditure identified in the project plan is made, or when the creating city or village dissolves the TID, whichever occurs first. Under the exception, which is limited to certain

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circumstances, after a TID pays off its project costs, but not later the date on which it must otherwise terminate, the planning commission may allocate positive tax increments generated by the TID (the "donor" TID) to another TID that has been created by the planning commission.

This bill makes a number of technical and substantive changes to the TIF program. Among the technical changes, the bill does the following:

1. Prohibits DOR from certifying a tax incremental base of a TID until DOR reviews and approves the findings submitted by the city or village relating to the equalized value of taxable property in the TID and the equalized value of all of the taxable property in the city or village.

2. Allows a representative from a union high school district and a representative from an elementary school district to each have one-half vote on a joint review board.

3. Changes from 10 days to 60 days the time period in which a city or village must notify DOR of a TID's termination.

4. Requires a city or village to provide DOR with a final accounting of TID project expenditures, project costs, and positive tax increments received. If the city or village does not provide this information to DOR within the time period agreed on by the city or village and DOR, DOR may not certify the tax incremental base of any other TID in the city or village.

Among the substantive changes, the bill does the following:

1. Authorizes a city or village to create a TID if at least 50 percent of the area to be included in the TID is a "mixed-use development," which is defined as a development that contains a combination of industrial, commercial, and residential uses and in which the newly platted residential portion consists of no more than 35 percent, by area, of the real property within the district.

2. Authorizes a county that is not included in a metropolitan statistical area to create a TID in a town, if the town board agrees, if all contiguous cities and villages agree, and if the town and such cities and villages enter into a cooperative plan boundary agreement.

3. Specifies that, generally, the public schools representative to a TID's joint review board is the school board president or the president's designee; that the county representative is the county executive if there is one, or the county board chair, or the executive's or board chair's designee; that the city or village representative is the mayor or village board president, or a designee; that for a TID created by a county in a town, the town chooses a representative; and that the technical college representative is the director or the director's designee.

4. Repeals a provision which currently prohibits the inclusion, as project costs, of expenditures or monetary obligations for newly platted residential development of a TID for which a project plan is approved after September 30, 1995.

5. Changes the limits on how much of a city's or village's equalized value may be contained within a TID, although the limit does not apply if a city or village subtracts territory from a TID.

6. Allows TIDs to make expenditures for project costs at any time up to two years before the TID's mandatory termination date. Currently, in general, TIDs may

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make expenditures only for seven or ten years after the TID is created, depending on whether the TID was created after September 30, 1995, or before October 1, 1995.

7. Extends from 23 years to 27 years the maximum life of a "blighted area" or "rehabilitation or conservation" TID, and reduces from 23 years to 20 years the maximum life of an "industrial site" or "mixed-use development" TID. In the 18th year of an industrial or mixed use TID's life, however, the creating city or village may ask the joint review board to extend the TID's life for five years. The city or village may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its costs within its original 20 year life span. The joint review board may choose to approve or deny a request to extend a TID's life for five years but, if accompanied by an audit, the board must approve a request for a five-year extension.

8. Changes the period during which DOR may allocate positive tax increments for TIDs created on or after the effective date of the bill, from 23 years to 20 years after a TID's creation if the TID is classified as a mixed-use development or industrial TID, and from 23 to 27 years after a TID's creation if the TID is classified as a blighted area or rehabilitation or conservation TID.

9. Authorizes a TID's project plan to be amended at any time during the TID's life, up to four times, to allow the addition or subtraction of territory from the TID. Currently, a TID's project plan may only be so amended once, and only during the TID's first seven years of existence.

10. Requires that before a "donor" TID may transfer positive tax increments to another TID, it must demonstrate that it has sufficient revenues to pay for all incurred project costs and surplus revenues to pay for some of the "donee" TID's eligible costs. Under current law, the "donor" TID need only have sufficient revenues to pay costs that are due in the current year.

11. Subject to joint review board approval, allows a TID that has not otherwise reached its mandatory termination date, to share its positive tax increments with certain other TIDs that share its overlying taxing jurisdictions.

12. Limits the inclusion in a TID of land that has been annexed by the city or village.

13. Prohibits a joint review board from approving a TID proposal unless the board asserts that, in its judgment, the development project described in the TID documents would not occur without the creation of a TID.

14. Provides that an amendment to a TID's boundary may subtract territory from the TID if the subtraction does not remove contiguity from the TID.

15. Allows a city or village to create a standing joint review board that may remain in existence for the entire time that any TID exists in the city or village. The city or village may also disband the standing joint review board. Currently, a joint review board may vote to disband following the approval or rejection of a TID proposal.

16. Specifically requires that an amendment to a project plan requires the same findings by a city or village relating to the equalized value of taxable property in the TID and the equalized value of all of the taxable property in the city or village as is currently required for the creation of a TID.

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This bill also makes a technical modification to the environmental remediation tax incremental financing program. Under current law, the environmental remediation tax incremental financing program permits a city, village, town, or county (political subdivision) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the TIF program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation. Under the bill, if a city or village annexes property from a town that is using an ERTID to remediate environmental pollution on all or part of the territory that is annexed, the city or village must pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, must negotiate an agreement on the amount that must be paid.

Generally, this bill takes effect on the first day of the 4th month after the bill is enacted.

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

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

1           **SECTION 1.** 59.57 (3) of the statutes is created to read:

2           **59.57 (3) COUNTY TAX INCREMENT POWERS.** (a) Subject to par. (b), a county that  
3 was completely outside of a metropolitan statistical area, as defined in s. 560.70 (5),  
4 before the 2000 census may exercise all powers of a city under s. 66.1105. If a county  
5 exercises the powers of a city under s. 66.1105, the county board of the county is  
6 subject to the same duties as a common council under s. 66.1105, and the county is  
7 subject to the same duties and liabilities as a city under s. 66.1105.

8           (b) A county that wishes to create a tax incremental district as provided in par.

9           (a) may do so only in a town that is contiguous to a city or village and whose board  
10 has approved the creation of such a district and only if all of the following occur:

## 2003 ASSEMBLY BILL 654

November 10, 2003 - Introduced by Representatives M. LEHMAN, WIECKERT, NISCHKE, OLSEN, BOYLE, KRAWCZYK, KREIBICH, MUSSER, GUNDERSON, VAN ROY, LADWIG, TOWNSEND, HUNDERTMARK, LOTHIAN, HINES, GOTTLIEB, UNDERHEIM, ALBERS, BALOW, FREESE, GIELOW, HAHN, HUBER, HEBL, F. LASEE, LOEFFELHOLZ, MCCORMICK, JESKEWITZ, OTT, PETROWSKI, STEINBRINK, STONE, VAN AKKEREN, VRAKAS, WEBER, J. WOOD and STASKUNAS, cosponsored by Senators STEPP, KANAVAS, DARLING, LEIBHAM, JAUCH, A. LASEE, WIRCH, ROESSLER, SCHULTZ, BROWN, KEDZIE, HANSEN, S. FITZGERALD, M. MEYER, ZIEN and ROBSON. Referred to Committee on Ways and Means.

1     **AN ACT to repeal** 66.1105 (2) (f) 3., 66.1105 (4) (h) 3., 66.1105 (6) (a) 3. and 66.1105  
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3     66.1105 (4) (gm) 4. a., 66.1105 (4) (gm) 4. c., 66.1105 (4) (h) 1., 66.1105 (4) (h) 2.,  
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**ASSEMBLY BILL 654**

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This bill makes a number of technical and substantive changes to the TIF program. Among the technical changes, the bill does the following:

1. Prohibits DOR from certifying a tax incremental base of a TID until DOR reviews and approves the findings submitted by the city or village relating to the equalized value of taxable property in the TID and the equalized value of all of the taxable property in the city or village.

2. Allows a representative from a union high school district and a representative from an elementary school district to each have one-half vote on a joint review board.

3. Changes from 10 days to 60 days the time period in which a city or village must notify DOR of a TID's termination.

4. Requires a city or village to provide DOR with a final accounting of TID project expenditures, project costs, and positive tax increments received. If the city or village does not provide this information to DOR within the time period agreed on by the city or village and DOR, DOR may not certify the tax incremental base of any other TID in the city or village.

Among the substantive changes, the bill does the following:

1. Authorizes a city or village to create a TID if at least 50 percent of the area to be included in the TID is a "mixed-use development," which is defined as a development that contains a combination of industrial, commercial, and residential uses and in which the newly platted residential portion consists of no more than 35 percent, by area, of the real property within the district.

2. Authorizes a county that is not included in a metropolitan statistical area to create a TID in a town, if the town board agrees, if all contiguous cities and villages agree, and if the town and such cities and villages enter into a cooperative plan boundary agreement.

3. Specifies that, generally, the public schools representative to a TID's joint review board is the school board president or the president's designee; that the county representative is the county executive if there is one, or the county board chair, or the executive's or board chair's designee; that the city or village representative is the mayor or village board president, or a designee; that for a TID created by a county in a town, the town chooses a representative; and that the technical college representative is the director or the director's designee.

4. Repeals a provision which currently prohibits the inclusion, as project costs, of expenditures or monetary obligations for newly platted residential development of a TID for which a project plan is approved after September 30, 1995.

5. Changes the limits on how much of a city's or village's equalized value may be contained within a TID, although the limit does not apply if a city or village subtracts territory from a TID.

6. Allows TIDs to make expenditures for project costs at any time up to two years before the TID's mandatory termination date. Currently, in general, TIDs may

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make expenditures only for seven or ten years after the TID is created, depending on whether the TID was created after September 30, 1995, or before October 1, 1995.

7. Extends from 23 years to 27 years the maximum life of a "blighted area" or "rehabilitation or conservation" TID, and reduces from 23 years to 20 years the maximum life of an "industrial site" or "mixed-use development" TID. In the 18th year of an industrial or mixed use TID's life, however, the creating city or village may ask the joint review board to extend the TID's life for five years. The city or village may provide the joint review board with an independent audit that demonstrates that the district is unable to pay off its costs within its original 20 year life span. The joint review board may choose to approve or deny a request to extend a TID's life for five years but, if accompanied by an audit, the board must approve a request for a five-year extension.

8. Changes the period during which DOR may allocate positive tax increments for TIDs created on or after the effective date of the bill, from 23 years to 20 years after a TID's creation if the TID is classified as a mixed-use development or industrial TID, and from 23 to 27 years after a TID's creation if the TID is classified as a blighted area or rehabilitation or conservation TID.

9. Authorizes a TID's project plan to be amended at any time during the TID's life, up to four times, to allow the addition or subtraction of territory from the TID. Currently, a TID's project plan may only be so amended once, and only during the TID's first seven years of existence.

10. Requires that before a "donor" TID may transfer positive tax increments to another TID, it must demonstrate that it has sufficient revenues to pay for all incurred project costs and surplus revenues to pay for some of the "donee" TID's eligible costs. Under current law, the "donor" TID need only have sufficient revenues to pay costs that are due in the current year.

11. Subject to joint review board approval, allows a TID that has not otherwise reached its mandatory termination date, to share its positive tax increments with certain other TIDs that share its overlying taxing jurisdictions.

12. Limits the inclusion in a TID of land that has been annexed by the city or village.

13. Prohibits a joint review board from approving a TID proposal unless the board asserts that, in its judgment, the development project described in the TID documents would not occur without the creation of a TID.

14. Provides that an amendment to a TID's boundary may subtract territory from the TID if the subtraction does not remove contiguity from the TID.

15. Allows a city or village to create a standing joint review board that may remain in existence for the entire time that any TID exists in the city or village. The city or village may also disband the standing joint review board. Currently, a joint review board may vote to disband following the approval or rejection of a TID proposal.

16. Specifically requires that an amendment to a project plan requires the same findings by a city or village relating to the equalized value of taxable property in the TID and the equalized value of all of the taxable property in the city or village as is currently required for the creation of a TID.

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This bill also makes a technical modification to the environmental remediation tax incremental financing program. Under current law, the environmental remediation tax incremental financing program permits a city, village, town, or county (political subdivision) to defray the costs of remediating contaminated property that is owned by the political subdivision. The mechanism for financing costs that are eligible for remediation is very similar to the mechanism under the TIF program. If the remediated property is transferred to another person and is then subject to property taxation, environmental remediation tax incremental financing may be used to allocate some of the property taxes that are levied on the property to the political subdivision to pay for the costs of remediation. Under the bill, if a city or village annexes property from a town that is using an ERTID to remediate environmental pollution on all or part of the territory that is annexed, the city or village must pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, must negotiate an agreement on the amount that must be paid.

Generally, this bill takes effect on the first day of the 4th month after the bill is enacted.

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

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

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2           **59.57 (3) COUNTY TAX INCREMENT POWERS.** (a) Subject to par. (b), a county that  
3 was completely outside of a metropolitan statistical area, as defined in s. 560.70 (5),  
4 before the 2000 census may exercise all powers of a city under s. 66.1105. If a county  
5 exercises the powers of a city under s. 66.1105, the county board of the county is  
6 subject to the same duties as a common council under s. 66.1105, and the county is  
7 subject to the same duties and liabilities as a city under s. 66.1105.

8           (b) A county that wishes to create a tax incremental district as provided in par.

9 (a) may do so only in a town that is contiguous to a city or village and whose board  
10 has approved the creation of such a district and only if all of the following occur:

## 2003 ASSEMBLY BILL 608

October 23, 2003 - Introduced by Representatives ALBERS, BERCEAU, FREESE, GRONEMUS, GUNDERSON, HINES, JENSEN, M. LEHMAN, MUSSER, PETTIS, POWERS, PLOUFF and OLSEN, cosponsored by Senators STEPP and LAZICH. Referred to Committee on Property Rights and Land Management.

1 AN ACT *to repeal* 66.1001 (3) (a) to (f), 66.1001 (3) (i), 66.1001 (3) (m) to (p),  
2 66.1001 (3) (r) and 66.1001 (3) (s); *to amend* 66.1001 (2) (i), 66.1001 (3) (intro.),  
3 66.1001 (4) (c) and 66.1001 (4) (d) (intro.); and *to create* 66.1001 (1) (c) and  
4 66.1001 (5) of the statutes; **relating to:** making changes to the comprehensive  
5 planning statute known as Smart Growth.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Also under current law, a city or village, or certain towns that exercise village powers, may create a city, village, or town plan commission to engage in zoning and land use planning. If a city, village, or town creates such a commission, the commission is required to adopt a master plan for the physical development of the city, village, or town, including in some instances, in the case of a city or village, unincorporated areas outside of the city or village which are related to the city's or village's development.

Under the current law popularly known as the "Smart Growth" statute, if a local governmental unit (city, village, town, county, or regional planning commission)

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creates a comprehensive plan (a development plan or a 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.

This bill reduces the number of programs or actions with which a comprehensive plan must be consistent. Under the bill, the only actions which must be consistent with a comprehensive plan are official mapping, local subdivision regulation, and zoning ordinances, including zoning of shorelands or wetlands in shorelands.

The bill also reiterates that an RPC's comprehensive plan is only advisory in its applicability to a political subdivision (a city, village, town, or county), and a political subdivision's comprehensive plan.

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

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

1           **SECTION 1.** 66.1001 (1) (c) of the statutes is created to read:

2           66.1001 (1) (c) "Political subdivision" means a city, village, town, or county that  
3 may adopt, prepare, or amend a comprehensive plan.

4           **SECTION 2.** 66.1001 (2) (i) of the statutes is amended to read:

5           66.1001 (2) (i) *Implementation element.* A compilation of programs and specific  
6 actions to be completed in a stated sequence, including proposed changes to any  
7 applicable zoning ordinances, official maps, ~~sign regulations, erosion and storm~~  
8 ~~water control ordinances, historic preservation ordinances, site plan regulations,~~  
9 ~~design review ordinances, building codes, mechanical codes, housing codes, sanitary~~  
10 ~~codes~~ or subdivision ordinances, to implement the objectives, policies, plans and

## 2003 ASSEMBLY BILL 650

November 10, 2003 - Introduced by Representatives KESTELL, GRONEMUS, M. LEHMAN, OTT, GIELOW, WARD, TOWNS, HINES, BIES, PETROWSKI, SUDER and MUSSER, cosponsored by Senators HARSDORF and WELCH. Referred to Committee on Ways and Means.

1 AN ACT *to amend* 70.32 (2) (c) 1d. of the statutes; **relating to:** the definition of  
2 agricultural forest land for property tax purposes.

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### *Analysis by the Legislative Reference Bureau*

Under current law, for property tax purposes, agricultural forest land is land that is producing or is capable of producing commercial forest products and is contiguous to a parcel that has been classified in whole as agricultural land for property tax purposes, if the contiguous parcel is owned by the same person that owns the agricultural forest land.

Under this bill, agricultural forest land is land that is producing or is capable of producing commercial forest products and is either located on a parcel that contains land that is classified as agricultural land or is located on a parcel that is contiguous to a parcel that has been classified in whole as agricultural land or as agricultural land and other, if the contiguous parcel is owned by the same person that owns the agricultural forest land. Under current law, land classified as "other" includes any residence for a farm operator's spouse, children, parents, or grandparents.

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

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

## 2003 ASSEMBLY BILL 655

November 11, 2003 - Introduced by Representatives GARD, KAUFERT, JOHNSRUD, GROTHMAN, MONTGOMERY, SUDER, KESTELL, NASS, J. FITZGERALD, TOWNS, FREESE, NISCHKE, MCCORMICK, HONADEL, D. MEYER, KRAWCZYK, KREIBICH, OWENS, J. WOOD, OTT, TOWNSEND, HUEBSCH, GIELOW, JESKEWITZ, GUNDERSON, HUNDERTMARK, LADWIG and HAHN, cosponsored by Senators PANZER, STEPP, KEDZIE, ZIEN, DARLING, LEIBHAM, ROESSLER, WELCH and KANAVAS. Referred to Joint Committee on Finance.

1     **AN ACT to repeal** 19.52 (4), 30.01 (6b), 30.02, 30.12 (2), 30.12 (3) (b), 30.12 (3) (bn),  
2           30.12 (3) (d), 30.12 (4) (title), 30.12 (4m) (title), 30.12 (5), 30.123 (3), 30.123 (5),  
3           30.13 (1), 30.13 (2), 30.13 (4) (d), 30.135 (1) (title), 30.135 (2), (3) and (4), 30.18  
4           (9), 30.19 (1) (b), 30.19 (2), 30.19 (3), 30.195 (3) (title), 30.195 (4), 30.195 (7),  
5           30.206 (2), 30.206 (3m), 30.207 (4) (b), 30.207 (5), 227.45 (7) (a) to (d), 227.46 (2),  
6           227.46 (2m), 227.46 (3), 227.46 (4), 285.11 (6) (a) and (b), 285.21 (1) (a) (title),  
7           285.21 (1) (b), 285.60 (2m) and 285.63 (2) (d); **to renumber** 30.12 (3) (bt) 1. to  
8           9., 30.12 (4) (d), 30.135 (1) (a) 1., 30.135 (1) (a) 3., 30.20 (1) (c) 3., 285.61 (8) (a),  
9           285.62 (8) and 285.66 (2); **to renumber and amend** 30.015, 30.07, 30.12 (1)  
10          (intro.), 30.12 (1) (a), 30.12 (1) (b), 30.12 (3) (a) 2., 30.12 (3) (a) 2m., 30.12 (3) (bt)  
11          (intro.), 30.12 (4) (a), 30.12 (4) (b), 30.12 (4) (c), 30.12 (4) (e), 30.12 (4) (f), 30.12  
12          (4m), 30.123 (1), 30.123 (4), 30.135 (1) (a) (intro.), 30.135 (1) (a) 2., 30.135 (1) (b),  
13          30.19 (1) (intro.), 30.19 (1) (a), 30.19 (1) (c), 30.19 (4), 30.195 (3), 30.20 (1) (d),  
14          30.206 (1), 30.206 (3), 30.206 (4), 227.45 (7) (intro.), 285.11 (6) (intro.), 285.21

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1 (1) (a), 285.27 (2) (b), 285.61 (2) and 285.62 (2); **to consolidate, renumber and**  
2 **amend** 30.20 (1) (c) 1. and 2.; **to amend** 16.957 (2) (b) 1. (intro.), 16.957 (2) (c)  
3 2., 16.957 (3) (b), 19.52 (3), 25.96, 29.601 (5) (a), 30.01 (1p), 30.10 (4) (a), 30.11  
4 (4), 30.12 (title), 30.12 (3) (a) 6., 30.12 (3) (c), 30.123 (2), 30.13 (1m) (intro.), 30.13  
5 (1m) (b), 30.13 (4) (a), 30.13 (4) (b), 30.131 (1) (intro.), 30.18 (2) (a) (intro.), 30.18  
6 (2) (b), 30.18 (4) (a), 30.18 (6) (b), 30.19 (1m) (intro.), 30.19 (1m) (a), 30.19 (1m)  
7 (b), 30.19 (1m) (c), 30.19 (1m) (d), 30.19 (1m) (e), 30.19 (4) (title), 30.19 (5),  
8 30.195 (1), 30.196 (intro.), 30.20 (1) (a), 30.20 (1) (b), 30.20 (2) (title), 30.20 (2)  
9 (a) and (b), 30.20 (2) (c), 30.2026 (2) (d), 30.2026 (3) (a), 30.206 (6), 30.206 (7),  
10 30.207 (1), 30.207 (3) (d) 2., 30.28 (3) (b), 30.29 (3) (d), 30.298 (3), 31.39 (2m) (c),  
11 66.1001 (2) (e), 66.1001 (4) (a), 84.18 (6), 106.01 (9), 106.025 (4), 146.82 (2) (a)  
12 (intro.), 196.195 (10), 196.24 (3), 196.374 (3), 196.491 (1) (d), 196.491 (2) (a) 3.,  
13 196.491 (2) (a) 3m., 196.491 (2) (g), 221.0901 (3) (a) 1., 221.0901 (8) (a) and (b),  
14 227.14 (2) (a), 227.19 (2), 227.19 (3) (intro.), 227.19 (3) (a), 227.19 (3) (b), 227.46  
15 (1) (intro.), 227.46 (1) (h), 227.46 (6), 227.47 (1), 227.485 (5), 227.53 (1) (a) 3.,  
16 236.16 (3) (d) (intro.), 281.22 (2) (c), 285.11 (9), 285.17 (2), 285.21 (2), 285.21 (4),  
17 285.23 (1), 285.27 (1) (a), 285.27 (2) (a), 285.27 (4), 285.60 (1) (a) 1., 285.60 (1)  
18 (b) 1., 285.60 (2) (a), 285.60 (6), 285.61 (1), 285.61 (3), 285.61 (4) (a), 285.61 (4)  
19 (b) 2. and 3., 285.61 (5) (a) (intro.), 285.61 (5) (c), 285.61 (7) (a), 285.61 (8) (b),  
20 285.62 (1), 285.62 (3) (a) (intro.), 285.62 (3) (c), 285.62 (5) (a), 285.62 (6) (c) 1.,  
21 285.62 (7) (b), 285.63 (1) (d), 285.66 (3) (a), 285.69 (1) (a), 285.81 (1) (intro.),  
22 289.27 (5), 299.05 (2) (a), 448.02 (3) (b), 448.675 (1) (b), 452.09 (2) (a), 452.09 (2)  
23 (c) (intro.) and 452.09 (3) (d); **to repeal and recreate** 30.12 (3) (title), 30.12 (3)  
24 (a) (intro.), 30.123 (title), 30.195 (2), 30.20 (1) (title), 285.11 (17), 285.60 (3) and  
25 285.62 (9) (b); and **to create** 16.957 (2m), 30.01 (1am), 30.12 (1b), 30.12 (1g)



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1 (intro.), (a), (b) and (e) to (j), 30.12 (3) (a) 9., 30.12 (3) (a) 10., 30.12 (3) (a) 11.,  
2 30.12 (3) (a) 12., 30.12 (3) (br), 30.12 (3) (bv), 30.12 (3m), 30.121 (3w), 30.123 (6),  
3 30.123 (7), 30.123 (8), 30.19 (1b), 30.19 (1m) (cm), 30.19 (1m) (g), 30.19 (1m) (h),  
4 30.19 (3r), 30.19 (4) (a), 30.19 (4) (b), 30.19 (4) (c) 1., 30.195 (1m), 30.20 (1g)  
5 (title) and (b), 30.20 (1r), 30.20 (2) (bn), 30.20 (2) (d), 30.20 (2) (e), 30.201,  
6 30.2022 (title), 30.206 (1) (title), 30.206 (1) (c) 1. to 3., 30.206 (3) (title), 30.206  
7 (3) (c), 30.206 (5) (title), 30.208, 30.209, 66.0628, 66.1001 (4) (e), 106.04, 146.82  
8 (2) (a) 22., 196.195 (5m), 196.374 (3m), 227.135 (1) (e) and (f), 227.137, 227.138,  
9 227.14 (2) (a) 3., 227.14 (2) (a) 4., 227.14 (2) (a) 5., 227.14 (2) (a) 6., 227.14 (4)  
10 (b) 3., 227.185, 227.19 (3) (am), 227.19 (3) (cm), 227.40 (4m), 227.43 (1g), 227.44  
11 (2) (d), 227.445, 227.483, 227.57 (11), 241.02 (3), 285.01 (12m), 285.14, 285.23  
12 (5), 285.23 (6), 285.27 (2) (b) 1. to 3., 285.27 (2) (d), 285.60 (2g), 285.60 (5m),  
13 285.60 (6m), 285.60 (6r), 285.60 (8), 285.60 (9), 285.60 (10), 285.61 (2) (b), 285.61  
14 (8) (a) 2., 285.61 (10), 285.61 (11), 285.62 (2) (b), 285.62 (7) (bm), 285.62 (8) (b),  
15 285.62 (12), 285.66 (2) (b), 285.755, 285.81 (1m), 295.13 (4) and 452.05 (3) of the  
16 statutes; **relating to:** administrative rules, guidelines, policies, and hearings;  
17 air pollution control; structures, deposits, and other activities in or near  
18 navigable waters; notice, hearing, and review procedures related to permits to  
19 place structures and materials and to conduct activities in or near navigable  
20 waters; nonmetallic mining reclamation financial assurances; strategic energy  
21 assessments; partial deregulation of telecommunications services;  
22 contributions by electric and gas utilities to the utility public benefits fund;  
23 grants for energy conservation and other programs; reciprocal agreements for  
24 real estate licenses; comprehensive planning by local governmental units; fees  
25 imposed by political subdivisions; the confidentiality of patient health care

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1 records; apprentice-to-journeyman job-site ratios; the acquisition of in-state  
2 banks and in-state bank holding companies; credit agreements; extending the  
3 time limit for emergency rule procedures; and granting rule-making authority.

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

This bill makes various changes relating to administrative rule-making and procedures, the control of air pollution, the protection of navigable waters, nonmetallic mining reclamation financial assurances, strategic energy assessments, the partial deregulation of telecommunications services, contributions to and grants from the utility public benefits fund, 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, 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.

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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

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restrictive than 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 a 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 a 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 a 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 a 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 a 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

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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

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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

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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

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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



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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).

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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 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 conducting 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

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(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.

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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.

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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

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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

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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.

**STRATEGIC ENERGY ASSESSMENTS**

Current law requires the Public Service Commission (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

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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 prohibits a utility from paying for expenses related to administration, marketing, or delivery of services for the utility's energy conservation programs 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.

**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.



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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

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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.