Summary of Budget Adjustment Provisions

2009 Wisconsin Act 2

Legislative Fiscal Bureau

February 23, 2009

Introduction

On January 29, 2009, the Legislative Fiscal Bureau released tax collection estimates for 2008-09 and the 2009-11 biennium. Those estimates were modified on February 11, 2009, because of a reduction in estimated cigarette and tobacco products taxes due to an increase in federal taxes on those products. Under those estimates, the net ending balance in the general fund for the 2008-09 fiscal year was projected to be -$600.2 million.

On February 17, 2009, the Joint Committee on Finance introduced 2009 Senate Bill 62, at the request to Governor James E. Doyle. The purpose of the bill was to reduce the projected 2008-09 deficit and begin to address a pending shortfall for the 2009-11 biennium.

The Joint Committee on Finance recommended the bill, as amended by Senate Amendment 1, for passage on a vote of 12-4. The Senate passed the bill, as recommended by the Joint Committee on Finance, on February 18 by a vote of 18-15. Also on February 18, the Assembly concurred in the bill as passed by the Senate, 51-48. The bill was signed into law by the Governor as 2009 Wisconsin Act 2 on February 19.

The act reduces the projected 2008-09 shortfall of $600.2 million by $183.3 million to $416.9 million. In addition, the act includes provisions which affect the 2009-11 budget.

Following this introduction is a table of contents, 2008-09 general fund condition statement, and a list of the general fund fiscal effects under the act. The document then summarizes each of the items of Act 2 and provides fiscal effects, if any, for 2008-09 and 2009-11.

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ESTIMATED GENERAL FUND CONDITION STATEMENT

2009 Act 2

	2008-09
Revenues	
Opening Balance	$130,696,000
Taxes	12,525,600,000
Departmental Revenues	
Tribal Gaming	93,922,200
Other	570,367,400
Total Available	$13,320,585,600
Appropriations	
Gross Appropriations	$14,074,786,700
Compensation Reserves	132,617,900
Biennial Appropriation Adjustment	-34,777,000
Sum Sufficient Reestimates	-18,640,600
Less Lapses	-416,490,000
Net Appropriations	$13,737,497,000
Balances	
Gross Balance	-$416,911,400
Less Required Statutory Balance	0
Net Balance, June 30	-$416,911,400

GENERAL FUND FISCAL EFFECTS -- 2009 Act 2

	2008-09
REVENUES	
General Fund Taxes	
Corporate Income and Franchise Tax -- Combined Reporting	$27,700,000
Sales and Use Tax on Software	9,400,000
Total	$37,100,000
APPROPRIATIONS	
TANF Contingency and Maintenance of Effort Funding	-$22,529,000
Wisconsin Development Fund Increased Funding for Specified Grants	2,630,000
Tenant Resource Center Grant	200,000
HELP Program -- WHEDA	4,000,000
Hospital Assessment and MA Rate Increase	-78,456,800
Medical Assistance -- Partially Address Projected 2008-09 Shortfall	50,000,000
Training Program Grants	1,000,000
Total	-$43,155,800
LAPSES OR TRANSFERS	
Lapse or Transfer Funds to the General Fund	38,044,400
BALANCES	
Eliminate Required Statutory Balance	-65,000,000
Effect on General Fund Balance	$183,300,200

	2009-11
REVENUES	
General Fund Taxes	
Corporate Income and Franchise Tax -- Combined Reporting	$187,300,000
Early Stage Business Investment Program	-7,000,000
Sales Tax on Digital Products	10,900,000
Sales and Use Tax on Software	56,600,000
Streamlined Sales and Use Tax	4,700,000
Total	$252,500,000
Departmental Revenues	
Regulation of Mortgage Bankers, Brokers, and Loan Originators	750,000
Total Revenues	$253,250,000
APPROPRIATIONS	
Dairy Cooperative Manufacturing Facility Investment Tax Credit	$1,300,000
Meat Processing Facility Tax Credit	1,000,000
Hospital Assessment and MA Rate Increase	-223,584,600
Total	-$221,284,600
LAPSES OR TRANSFERS	
Lapse or Transfer Funds to the General Fund	86,955,600
Effect on General Fund Balance	$561,490,200

SUMMARY OF PROVISIONS

GENERAL FUND TAXES

1. CORPORATE INCOME AND FRANCHISE TAX -- COMBINED REPORTING AND RELATED ENTITY TRANSACTIONS

	2008-09	2009-11
GPR-REV	$27,700,000	$187,300,000

Require that, beginning with tax year 2009, corporations that are subject to the state corporate income and franchise tax, and that are engaged in a unitary business with other corporations, would file a combined report in determining state income and franchise tax liability. In addition, management fees and intangible expenses would be included under current law provisions that govern the treatment of certain rent and interest payments to related parties.

Combined reporting would be implemented under the following statutory provisions:

Definitions

"Combined group" would be defined as the group of all persons whose income and apportionment factors are required to be taken into account to determine a member's share of the net business income or loss apportionable to this state that is attributable to a unitary business.

"Combined report" would mean a report in the form and manner prescribed by the Department of Revenue (DOR) that specified a combined group's income from the unitary business, apportionment factors attributable to the unitary business, and any other tax return information prescribed by the department.

"Commonly controlled group" would mean any of the following:

a. A parent corporation and any one or more corporations or chains of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation, if the parent corporation owns stock representing more than 50% of the voting power of at least one of the connected corporations, or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50% of the voting power of each of the connected corporations.

b. Any two or more corporations if a common owner, regardless of whether the owner is a corporate entity, directly or indirectly owns stock representing more than 50% of the voting power of the corporations or connected corporations.

c. Any two or more corporations if stock representing more than 50% of the voting power in each corporation are interests that cannot be separately transferred.

d. Any two or more corporations if stock representing more than 50% of the voting power in each corporation is directly owned by, or for the benefit of, family members. "Family member" would mean an individual related by blood, marriage, or adoption within the third degree of kinship, as computed under state law, or the spouse of such individual.

"Consolidated foreign operating corporation" would be defined as a corporation that, for the taxable year, satisfies all of the following conditions:

a. It is a member of a unitary business.

b. It is included in the same federal consolidated return as at least one other corporation in that unitary business.

c. It has active foreign business income, as defined under the Internal Revenue Code (IRC), in an amount that is 80% or more of the corporation's worldwide income.

"Corporation" would be defined as any corporation, as defined under the state statutory corporate income and franchise tax provisions, wherever located, which if it were doing business in this state would be subject to the state income and franchise taxes. "Corporation" would not include a tax-option corporation.

"Doing business in this state" would include: (a) issuing credit, debit, or travel and entertainment cards to customers in this state; (b) owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; (c) owning, directly or indirectly, an interest in a limited liability company (LLC) that does business in this state, regardless of the percentage of ownership, if the LLC is treated as a partnership for federal income tax purposes; (d) regularly selling products or services of any kind or nature to customers in this state that receive the product or service in this state; (e) regularly soliciting business from potential customers in this state; (f) regularly performing services outside this state for which the benefits are received in this state; (g) regularly engaging in transactions with customers in this state that involve intangible property and result in receipts flowing to the taxpayer from within this state; and (h) holding loans secured by real or tangible personal property located in this state. The current definition of "doing business in this state" includes items (a) through (c) above. The act adds the activities listed under items (d) through (h).

"Domestic" would be defined as incorporated, organized, or created in the United States or under the laws of the United States or any state.

"File" would mean to mail or deliver a document that DOR prescribes to the Department or, if DOR prescribes another method of submitting or another destination, use that other method or submit to that other destination

"Foreign" would mean not incorporated, organized, or created in the United States or under the laws of the United States or any state.

"Intangible expenses" would include the following, to the extent that the amounts would otherwise be deductible in determining Wisconsin net income: (a) expenses, losses, and costs for, related to, or directly or indirectly in connection with the acquisition of, use of, maintenance or management of, ownership of, sale of, exchange of, or any other disposition of, intangible property; (b) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (c) royalty, patent, technical, and copyright fees; (d) licensing fees; and (e) other similar expenses, losses, and costs.

"Interest expenses" would be interest that would be deductible in determining Wisconsin net income

"Pass-through entity" would be defined as a general or limited partnership, an organization of any kind treated as a partnership for tax purposes under state income and franchise tax provisions, a tax-option corporation, a real estate investment trust, a regulated investment company, a real estate mortgage investment conduit, a financial asset securitization investment trust, a trust, or an estate.

"Unitary business" would be defined as a single economic enterprise that is made up either of separate parts of a single business entity, of multiple business entities that are related under the IRC, or of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Two or more business entities would be presumed to be a unitary business if the businesses have unity of ownership, operation, and use as indicated by a centralized management or a centralized executive force; centralized purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate services, including administrative, employee benefits, human resources, legal, financial, and cash management services; intercorporate debts; intercorporate use of proprietary materials; interlocking directorates; or interlocking corporate officers. The definition would also provide that, in no event and under no circumstances could these provisions be construed as exclusive of any and all other factors indicative of a unitary business. The term "unitary business" would be broadly construed, to the extent permitted by the U.S. Constitution. The members of a combined group would be jointly and severally liable for costs, penalties, interests, and taxes associated with the combined report. Any business conducted by a pass-through entity that was owned, directly or indirectly by a corporation, would be treated as conducted by the corporation, to the extent of the corporation's distributive share of the pass-through entity's income, regardless of the percentage of the corporation's ownership interest. A business conducted directly or indirectly by one corporation would be unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a pass-through entity, if there was a synergy and exchange and flow of value between the two parts of the business, and if the two corporations were members of the same commonly controlled group.

Corporations Required to Use Combined Reporting

A corporation, not including a corporation of which all its income is exempt from taxation under state law, engaged in a unitary business with one or more other corporations would be required to report its share of income from that unitary business in the amount determined by a combined report filed by a designated agent of the unitary business. The combined report would include the income, determined as required under combined reporting, and apportionment factor or factors as determined under combined reporting, of every corporation engaged in the unitary business, with certain exceptions specified below.

A foreign corporation that was a combined group member would be required to include in the combined report income that is derived only from sources within the United States as determined under IRC source rules and other general rules relating to foreign income. The foreign corporation would include in the combined report its apportionment factor or factors related only to that income.

Except for cases related to consolidated foreign operating corporations, if 80% or more of a corporation's worldwide income was active foreign business income, as defined in the IRC, the income and apportionment factor or factors of the corporation would not be included in the combined report, but the corporation would compute and allocate or apportion its income from the unitary business separately.

The combined report of the unitary business of which a consolidated foreign operating corporation was a member would be required include, and the separate return filed by the consolidated foreign operating corporation would exclude, the following amounts, to the extent that they were attributable to the unitary business:

a. An income amount equal to the interest expenses and intangible expenses that were paid, accrued, or incurred by any combined group member to or for the benefit of the consolidated foreign operating corporation, except to the extent such amounts constituted income to the consolidated foreign operating corporation from sources outside the United States, under foreign income source rules of the IRC.

b. To the extent that the amounts were not included under a., interest income and income generated from intangible property received or accrued by the consolidated foreign operating corporation, except to the extent such amounts constituted income from sources outside the United States, under IRC foreign income source rules. Income generated from intangible property would include income related to the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property; income from factoring transactions or discounting transactions; royalty, patent, technical, and copyright fees; licensing fees; and other similar income.

c. Dividends paid or accrued by a real estate investment trust to the consolidated foreign operating corporation, if the real estate investment trust was not a qualified real estate investment trust, as defined under state related party transaction provisions, and the dividend income was from sources within the United States, under foreign income source rules of the IRC.

d. Income of the consolidated foreign operating corporation that was equal to gains derived from the sale of real or personal property located in the United States.

e. The apportionment factor or factors attributable to the income described in "a" to "d" above.

A consolidated foreign operating corporation would compute and allocate or apportion its income from the unitary business separately, except for the amounts in described above.

DOR would be authorized to require that a combined report include the income and associated apportionment factor or factors of any person who was not otherwise included in a combined group, but who was a member of a unitary business, in order to reflect proper apportionment of income of the entire unitary business. The Department could require that a combined report include the income and associated apportionment factor or factors of persons that are not corporations.

If DOR determined that the reported income or loss of a member of a combined group engaged in a unitary business with any person not otherwise included in the combined group represented an avoidance or evasion of tax by the person or the combined group member, the Department could require all or any part of the income or loss and associated apportionment factor or factors of the person to be included in or excluded from the combined report for the unitary business, or could require the use of a different apportionment factor or factors. The Department could require that a combined report include or exclude the income or loss and associated apportionment factor or factors of persons that are not corporations.

This authority granted to DOR would be in addition to, and not a limitation of or dependent on, the provisions under state income and franchise tax law that were enacted to prevent tax avoidance or evasion or to clearly reflect the income of any person. Any determination by the Department under these provisions would be presumed correct and the person challenging the determination would have the burden of proving by clear and convincing evidence that the determination is incorrect.

Components of Income Subject to Tax

Each member of a combined group would be responsible for tax based on its taxable income or loss apportioned or allocated to this state, including:

a. Its share of any business income apportionable to this state of each of the combined groups of which it is a member. For financial organizations, as defined under state income and franchise tax law, business income would include interest, dividends, and receipts from investments of any kind. A financial organization would be required to treat the expenses associated with an investment as business expenses.

b. Its share of any business income apportionable to this state of a distinct business activity conducted within and outside the state wholly by the member.

c. Its income from a business conducted wholly by the member entirely within the state.

d. Its income sourced to this state from the sale or exchange of capital assets, and from involuntary conversions, as determined under combined reporting provisions.

e. Its nonbusiness income or loss allocable to this state.

f. Its income that was realized from the purchase and subsequent sale or redemption of lottery prizes, if the winning tickets were originally bought in this state.

g. Its income or loss allocated or apportioned in an earlier year, required to be taken into account as state source income or loss during the taxable year, other than a net business loss carry-forward.

h. Its net business loss carry-forward, as determined under combined reporting provisions.

Business Income of the Combined Group

The business income of a combined group would be the sum of the net Wisconsin income of each member of the combined group, with certain specified exceptions (described below). If a unitary business included income from a pass-through entity, the pass-through entity income to be included in the total income of the combined group would be the member of the combined group's direct and indirect distributive share of the pass-through entity's unitary business income. The business income would be modified as follows;

a. Subtract any apportionable income of a distinct business activity conducted within and outside the state wholly by the member, income from a business conducted wholly by the member entirely within this state, the member's nonbusiness income, the member's income realized from the purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in this state, and its income allocated or apportioned in an earlier year required to be taken into account as state source income during the taxable year.

b. Add any apportionable expense or loss of a distinct business activity conducted within and outside the state wholly by the member, expense or loss from a business conducted wholly by the member entirely within this state, the member's nonbusiness expense or loss, its loss allocated or apportioned in an earlier year required to be taken into account as state source loss during the taxable year, and its net business loss carry-forward, subject to combined reporting net operating loss provisions.

c. For combined group members that are consolidated foreign operating corporations, include only the income required under combined reporting provisions (described above under corporations required to use combined reporting). A combined group could deduct expenses properly attributable to such income of a consolidated foreign operating corporation.

d. Current state provisions related to the treatment of certain transactions between related entities would not apply with respect to interest expenses or intangible expenses paid, accrued, or incurred by a combined group member to or for the benefit of a consolidated foreign operating corporation.

e. Subtract any pre-apportionment net business loss carry-forward deduction, under combined reporting net operating loss provisions.

f. Except in cases where combined reporting consolidated foreign operating corporation or state law dividends received provisions applied, dividends paid by one combined group member to another would be, to the extent that the dividends are paid out of the earnings and profits of the unitary business included in the combined report, whether in the current taxable year or in a prior taxable year, subtracted from the income of the recipient. This provision would not apply to dividends received from members of the unitary business that were not part of the combined group during the calendar year preceding the receipt of the dividends.

g. Except as otherwise provided by rule, business income or loss from an intercompany transaction between members of the same combined group would be deferred as provided under U.S. Treasury Regulations governing deferred (capitalized) intercompany transactions. Upon the occurrence of any of the following events, deferred business income or loss resulting from an intercompany transaction between members of a combined group would be required to be included in the income of the seller and be apportioned as business income or loss recognized immediately before the event:

(1) The object of the deferred intercompany transaction is resold by the buyer to an entity that is not a member of the combined group.

(2) The object of the deferred intercompany transaction is resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged.

(3) The object of the deferred intercompany transaction is converted by the buyer or is otherwise transferred to a use outside the unitary business in which the buyer and seller are engaged.

(4) The buyer and seller are no longer members of the same combined group, regardless of whether the members are in the same unitary business.

h. A charitable expense incurred by a member of a combined group would have to be, to the extent allowable as a deduction under the IRC, subtracted first from the business income of the combined group, subject to the income limitations of the IRC provisions as applied to the entire business income of the combined group, and any remaining amount would then be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of the IRC applied to the nonbusiness income of that specific member. Any charitable deduction disallowed under these provisions, but allowed as a carryover deduction in a subsequent year, would be treated as originally incurred in the subsequent year by the same member, and these provisions would apply in the subsequent year in determining the allowable deduction in that year.

i. Gain or loss from the sale or exchange of capital assets, property described by IRC provisions governing gains or losses from property used in a trade or business, and property subject to an involuntary conversion, would be removed from the total separate net income of each member of a combined group and be apportioned and allocated as follows:

(1) For short-term capital gains or losses, long-term capital gains or losses, gains or losses under IRC provisions regarding property used in a trade or business, and involuntary conversions, all combined group members' business gains and losses would be combined within each class, and each class of net business gain or loss separately apportioned to each member using the member's apportionment factor or factors determined under combined reporting.

(2) Each member would then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the member's nonbusiness gain and loss for all classes allocated to this state, as provided under IRC provisions governing property used in a trade or business, involuntary conversions, and capital losses, without regard to any of the member's gains or losses from the sale or exchange of capital assets, property described under the applicable IRC provisions, and involuntary conversions that are nonbusiness items allocated to another state.

(3) Any state source income or loss, if the loss is not subject to the capital loss limitations of the IRC, of a member that results from the application of the previous two provisions., would then be applied to all other state source income or loss of that member.

(4) Any state source loss of a member that is subject to the capital loss limitations of the IRC would be carried forward or carried back by that member and would be treated as state source short-term capital loss incurred by that member for the year for which the carry-forward or carry-back applies.

j. Any expense of one member of the combined group that was directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary business would have to be allocated to that other member of the unitary business as corresponding nonbusiness or exempt expense, as appropriate.

Member's Share of Business Income of the Combined Group

Each member of a combined group would be considered to be doing business in this state if any member of the combined group was doing business in this state and that business related to the combined group's unitary business. Except for cases where individual group members used different apportionment formulas, a taxpayer's share of the business income apportionable to this state of each combined group of which it was a member would be the product of the business income of the combined group as determined under combined reporting provisions and the taxpayer's modified sales factor from the combined group, determined as follows:

a. For a member that was subject to apportionment under the single sales factor formula, the numerator of the modified sales factor would include the member's sales associated with the combined group's unitary business in this state. Throwback sales would be included in the numerator of the modified sales factor if no member of the combined group was within the jurisdiction of the destination state for income or franchise tax purposes.

b. For a member that was subject to apportionment using a receipts factor under DOR rules, the numerator of the modified sales factor would include the member's Wisconsin receipts associated with the combined group's unitary business in this state, as provided by such rules.

c. For a member that was subject to apportionment as an insurance company, the numerator of the modified sales factor would include the member's premiums that were associated with the combined group's unitary business in this state.

d. The denominator of the modified sales factor would include the denominator of the sales factor for each combined group member described above, the denominator of the receipts factor for each combined group member described above, and the denominator of the premiums factor for each combined group member described above.

e. For a member that was required under the Department's rules to use an apportionment factor or factors other than the sales factor, receipts factor, or premiums factor, the numerator of the modified sales factor for such member would be its Wisconsin apportionment percentage on a separate entity basis based on the rules prescribed by the Department, multiplied by the member's total sales, as defined under state income and franchise tax law. The denominator of the modified sales factor for such member would the member's total sales as defined under state income and franchise tax law.

f. The numerator and denominator, described in "a" to "e" above have to include the sales, receipts, or premiums of pass-through entities that were owned directly or indirectly by a corporation in proportion to a ratio, the numerator of which was the amount of the corporation's distributive share of the pass-through entity's unitary business income included in the income of the combined group under combined reporting provisions, and the denominator of which was the amount of the pass-through entity's total unitary business income.

g. The modified sales factor would exclude transactions between members of the same combined group.

h. For purposes of determining the numerator of the modified sales factor or any apportionment factor or factors determined for members with different apportionment formulas, a taxpayer would be considered to be within the jurisdiction for income or franchise tax purposes of any state in which any member of its combined group is within the jurisdiction for income or franchise tax purposes.

If two or more members of a combined group would otherwise be required to use differing apportionment formulas from one another, and if the business income of the combined group derived from business transacted in this state of that combined group could not be ascertained with reasonable certainty by use of the modified sales factor, the combined group could petition DOR to use a different apportionment computation for the combined report. This provision would not apply if less than 30% of the business income of the combined group would otherwise be required to be apportioned using a factor or factors other than a single sales factor, a single receipts factor, or a single premiums factor. The Department would be required to deny the petition if the taxpayer could not show, by clear and convincing evidence, that the apportionment methods described in these provisions did not clearly reflect the income of the unitary business attributable to this state.

Credits, Net Business Losses, and Post-Apportionment Deductions

No tax credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, could be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group, except as provided under combined reporting net operating loss provisions. However, a member of a combined group could use a carry-forward of a credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction otherwise allowable under state income and franchise tax law, that was incurred by that same member in a tax year beginning before the effective date of act.

A combined group member's share of a Wisconsin net business loss computed on a combined report for a taxable year beginning on or after the effective date of the act would be subject to the applicable income and franchise tax and insurance company tax carry-forward period and limitations A member could use such Wisconsin net business loss, or share it among the members of the unitary business filing the combined report, as follows:

a. For the tax year in which the Wisconsin net business loss from the unitary business was generated, such loss would first have to be offset by the member against its Wisconsin income for that same tax year from sources other than the unitary business, if there was any such income. In subsequent years, the member would offset such loss first against income from that same unitary business and then from sources other than the unitary business.

b. In the subsequent year, if the member was included in the combined report of the same unitary business for the tax year for which the member would offset the loss, the member would be required to convert its unused Wisconsin net business loss carry-forward attributable to the unitary business to a pre-apportionment net business loss carry-forward (described in "c" below) and offset it against the combined group's business income computed under combined reporting provisions. Any amount of pre-apportionment net business loss carry-forward not offset by the combined group's business income would then be converted back to a Wisconsin net business loss carry-forward (described in "d" below) and offset against the member's income, if any, from sources other than the unitary business. The state income and franchise tax carry-forward period and limitations would apply in the same manner as if the loss was not converted to a pre-apportionment net business loss carry-forward before used.

c. The pre-apportionment net business loss carry-forward for each year for which a combined group member has available Wisconsin net business loss would be the member's apportioned share of the Wisconsin net business loss computed on the combined report for the year in which the loss was generated, divided by the member's Wisconsin apportionment percentage computed on that same combined report.

d. A combined group member's pre-apportionment net business loss carry-forward computed under "c" above, but not used, would have to be converted back to a Wisconsin net business loss carry-forward by multiplying the member's apportioned share of the remaining Wisconsin net business loss computed on the combined report for the year in which the loss was generated by the member's Wisconsin apportionment percentage computed on that same combined report.

e. Except as provided by DOR by rule, if a corporation could no longer be included in the combined report, that corporation's share of Wisconsin net business loss carry-forward from the combined group could not be shared among or transferred to any other members of the combined group or members of other combined groups, but the corporation could claim the loss carry-forward against its own income attributable to other unitary businesses or other sources of income, subject to the limitations under state income and franchise tax provisions.

Designated Agent

Each combined group would be required to have one designated agent. The designated agent would the parent corporation of the combined group. If there was no such parent corporation, the designated agent could be appointed by the members. If there was no such parent corporation and no member was appointed, the designated agent would be the member that had the most significant operations in this state on a recurring basis, as determined by DOR. The designated agent could change only when the designated agent was no longer a member of the combined group, in which case the succeeding designated agent would be required to notify DOR of the change in the manner prescribed by the Department.

Only the designated agent could act on behalf of the members of the combined group for matters relating to the combined report. The designated agent's responsibilities would include:

a. Filing a combined report.

b. Filing any extension.

c. Filing any amended combined reports or claims for refunds or credits.

d. Sending and receiving all correspondence with the Department regarding the combined report.

e. Remitting all taxes, including estimated taxes, to the Department. For purposes of computing interest on late payments, all payments remitted would be deemed to be made on a pro rata basis by all members of the combined group, unless otherwise specified by the designated agent.

f. Participating on behalf of the combined group members in any investigation or hearing requested by the Department regarding a combined report, producing all information requested by the Department regarding the combined report, and filing any appeal related to the combined report, investigation, or hearing. Any appeal filed by the designated agent would be considered to be filed by all members of the combined group.

g. Executing waivers, closing agreements, powers of attorney, and other documents as necessary or required regarding the combined report that would be filed. Any waiver, agreement, power of attorney, or document executed by the designated agent would be considered as executed by all members of the combined group.

h. Receiving notices regarding the combined report. Any such notice the designated agent receives would be considered received by all members of the combined group.

i. Receiving refunds relating to the combined report. Any such refund would be paid to and in the name of the designated agent and would discharge any liability of the state to any member of the combined group regarding the refund.

j. Other responsibilities as determined by rule by the Department.

Acts by designated agents that were contrary to the responsibilities described above would be unauthorized acts that would not bind the DOR in any manner. The Department could choose to receive the benefits or assume the obligations of any such unauthorized acts. DOR would be bound by such unauthorized acts only if it took affirmative steps to expressly manifest its intent to receive the benefits or assume the obligations of any such acts. If the Department took such affirmative steps to ratify an unauthorized act, the unauthorized act would relate back to the time of the unauthorized act.

DOR could relieve the designated agent from any of the authorized duties. Unless the Department provided for such relief by rule, a designated agent would have to obtain written approval from the Department to be relieved of those duties.

Tax Year of the Combined Group

The combined group's tax year would be determined as follows:

a. If two or more members of a combined group filed a federal consolidated return, the combined group's tax year would be the tax year of the federal consolidated group. In all other cases, the tax year would be the tax year of the designated agent.

b. If a tax year of a member of a combined group differed from the tax year of the combined group, the designated agent would be required to elect to determine the portion of that member's income to be included in one of the following ways: (1) a separate income statement prepared from the books and records for the months included in the combined group's tax year; or (2) including all of the income for the year that ends during the combined group's taxable year.

c. For corporations that were subject to an election under "b" above, the same election would have to be made for each member of the combined group subject to the election, the same election would have to be made in each succeeding year, and the election would be irrevocable, except upon written approval by the Department.

Part-Year Members of a Combined Group

If a corporation became a member of a combined group or ceased to be a member of a combined group after the beginning of the tax year of the combined group, the corporation's income would be determined as provided under combined reporting provisions for the portion of the year in which the corporation was a member of the combined group and that income would be included in the combined report. The income for the remaining short period would be reported on a separate return or separate combined report.

Transition

DOR would deem as timely paid the estimated tax payments attributable to income includable in the combined report for installments that became due during the period beginning on January 1, 2009, and ending on the act's effective date, if such estimated tax payments were paid by the next installment due date that follows in sequence following the effective date. However, if the next installment due date that follows in sequence following the act's effective date was less than 45 days after the effective date, such estimated tax payments, in addition to the payment due less than 45 days after the effective date, would be deemed timely paid if paid by the next subsequent installment due date

Current law provisions for determining the location receipts from sales, other than sales of tangible personal property, used in computing the sales factor in the apportionment formula for apportioning the income of corporations, including insurance companies, and nonresident individuals, and estates and trusts engaged in business within and outside Wisconsin, would be modified. The treatment of certain types of sales would specified.

Gross Royalties and Other Related Gross Receipts

Gross royalties and other gross receipts received for the use or license of intangible property, including patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know-how, contracts, and customer lists, would be treated as in Wisconsin if any of the following applied:

a. The purchaser or licensee used the intangible property in the operation of a trade or business at a location in this state. If the purchaser or licensee used the intangible property in the operation of a trade or business in more than one state, the gross royalties and other gross receipts from the use of the intangible property would be divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states.

b. The purchaser or licensee was billed for the purchase or license of the use of the intangible property at a location in this state.

c. The purchaser or licensee of the use of the intangible property had its commercial domicile in this state.

If the taxpayer was not within the jurisdiction, for income or franchise tax purposes, in the state in which the gross royalties or other gross receipts were apportioned under these provisions, but the taxpayer's commercial domicile was in Wisconsin, 50% of those gross royalties or other gross receipts would be included in the numerator of the sales factor.

Sales of Intangible Property

Sales of intangible property, excluding securities, would be treated as sales in this state if any of the following applied:

a. The purchaser used the intangible property in the regular course of business operations in this state or for personal use in this state. If the purchaser used the intangible property in more than one state, the sales would be divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states.

b. The purchaser was billed for the purchase of the intangible property at a location in this state.

c. The purchaser of the intangible property had its commercial domicile in this state.

If the taxpayer was not within the jurisdiction, for income or franchise tax purposes, in the state in which the sales of intangible property were apportioned under these, but the taxpayer's commercial domicile was in Wisconsin, 50 percent of those gross receipts would be required to be included in the numerator of the sales factor.

Intangible Property

"Intangible property" would include stocks, bonds, financial instruments, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

The current law provision for sourcing sales of intangible property in the sales factor other than gross receipts from sales of computer software and services would be repealed. The current law provision governing the allocation of income gain or loss from intangible property that is earned by a personal holding company would also be repealed.

Financial Organizations

The definition of "financial organization" under situs of income, allocation, and apportionment provisions would be modified to include a subsidiary of a financial organization, if a significant purpose for the subsidiary is to hold investments, or if the subsidiary primarily functions to hold investments.

A number of provisions related to administration of state individual income and corporate income and franchise taxes would modified or created.

Allocation of Gross Income, Deductions, and Credits Between Two or More Businesses

The current law provision that authorizes the Secretary of Revenue, in cases where there are two or more organizations, to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he or she determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses, would apply whether or not the two organizations were unitary. Also, it would be specified that the authority granted by this provision would be in addition to, and not a limitation of, or be dependent upon, statutory related entity transaction provisions.

Transactions Without Economic Substance

DOR would be authorized, if any person, directly or indirectly, engaged in a transaction or series of transactions without economic substance to create a loss, or to reduce taxable income, or to increase credits allowed in determining Wisconsin tax, to determine the amount of a taxpayer's taxable income or tax so as to reflect what would have been the taxpayer's taxable income or tax if not for the transaction or transactions without economic substance causing the reduction in taxable income or tax.

A transaction would have economic substance only if the taxpayer showed both of the following:

a. The transaction changes the taxpayer's economic position in a meaningful way, apart from federal, state, local, and foreign tax effects.

b. The taxpayer has a substantial nontax purpose for entering into the transaction and the transaction is a reasonable means of accomplishing the substantial nontax purpose. A transaction has a substantial nontax purpose if it has substantial potential for profit, disregarding any tax effects.

Transactions between members of a controlled group, as defined under the IRC, would be presumed to lack economic substance and the taxpayer would bear the burden of establishing by clear and convincing evidence that a transaction or a series of transactions between the taxpayer and one or more members of the controlled group had economic substance.

Related Entity Add-Backs

2007 Wisconsin Act 226 enacted provisions that require Wisconsin taxpayers to add back to income certain interest and rent payments to related entities, if certain conditions are not met. Under the act, management fees and intangible expenses would be subject to current law related party transaction provisions.

"Management fees" would be defined to include expenses and costs, not including interest expenses, pertaining to accounts receivable and payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, tax, financial matters and securities, accounting, reporting and compliance, or similar activities, only to the extent that the amounts would otherwise be deductible in computing Wisconsin adjusted gross income.

"Intangible expenses" would include the following, to the extent that the amounts would otherwise be deductible in computing Wisconsin adjusted gross or net income:

a. Expenses, losses, and costs for, related to, or directly or indirectly in connection with the acquisition of, use of, maintenance or management of, ownership of, sale of, exchange of, or any other disposition of, intangible property.

b. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions.

c. Royalty, patent, technical, and copyright fees.

d. Licensing fees.

e. Other similar expenses, losses, and costs.

Initial Applicability

All of the provisions related to combined reporting, sourcing, tax administration and related party transactions would first apply to tax years beginning on January 1, 2009.

Fiscal Effect

These provisions would increase state income and franchise tax revenues by an estimated $27,700,000 in 2008-09, $75,600,000 in 2009-10, and $111,700,000 in 2010-11.

Current Law

Under the state corporate income and franchise tax, each corporation is taxed separately. Taxable income is determined using the gross income, deductions, and apportionment factor that reflect the unitary operations of a single corporation that is considered, for tax purposes, to be conducting business in Wisconsin. The income, deductions and apportionment factors of affiliated corporations are not included, even if the business operations of those corporations would be considered part of a single unitary business. If the state has nexus with affiliated corporations engaged in a unitary business, they are taxed separately. If the state does not have nexus with such corporations, they are not taxed by the state.

In general a single sales factor apportionment formula is used to apportion the income of a multistate corporation to Wisconsin. (The income of certain types of corporations, such as public utilities, is apportioned using different apportionment formulas). For purposes of computing the sales factor of the apportionment formula, certain statutory provisions are used to determine the situs, or location at which, the sales are considered to occur. Current law has specific provisions governing the situs of sales of tangible personal property, gross receipts from the sale of computer software, and gross receipts from services. Sales other than sales of tangible personal property and gross receipts from the sale of computer software and services are considered to be in Wisconsin if the income-producing activity is performed in Wisconsin. If the income-producing activity is performed both inside and outside the state, the sales are divided between those states having jurisdiction to tax such businesses in proportion to the direct costs of performance in each such state rendering this service.

"Doing business in this state" is defined to include issuing credit, debit, or travel and entertainment cards to customers in this state; owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; and owning, directly or indirectly, an interest in an LLC that does business in this state, regardless of the percentage of ownership, if the LLC is treated as a partnership for federal income tax purposes.

Currently, in any case of two or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary of Revenue or his or her delegate may distribute, apportion or allocate gross income, deductions, credits, or allowances between or among such organizations, trades or businesses, if he or she determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

Under current law related entity transaction provisions, rental expenses and interest expenses deducted or excluded under the IRC have to be added back if they are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities. However, a deduction is allowed for rental and interest expenses if certain conditions apply.

[Act 2 Sections: 74 thru 84, 86 thru 88, 110, 111, 115 thru 131, 133 thru 135, 148 thru 151, 157, 158, 166 thru 168, 170 thru 176, 178, 179, 192 thru 195, 208 thru 214, and 9343(1)]

2. EARLY STAGE BUSINESS INVESTMENT PROGRAM

	2008-09	2009-11
GPR-REV	$0	- $7,000,000

Modify provisions of the early stage business investment program, including the angel investment tax credit and early stage seed investment tax credit as follows:

Angel Credit Percentage. For tax years beginning after December 31, 2007, provide that the angel investment tax credit would equal 25% of the claimant's bona fide angel investment made directly in a qualified new business venture (QNBV) for the tax year certified by Commerce. (Current law provides a 12.5% credit over two years.) In addition, eliminate the $2.0 million maximum limit on the amount of a claimant's investment made directly in a QNBV that may be used as the basis for an angel investment tax credit.

Insurance Premiums Tax Credit. Provide an early stage seed investment tax credit under the state insurance premiums tax, for tax years beginning after December 31, 2008. Similar to the individual income and corporate income and franchise tax credits, the insurance premiums tax credit could be claimed against state premiums taxes and would equal 25% of the insurer's investment paid to a fund manager that invests in a certified business. Unused credits could be carried forward up to 15 years to offset future insurance premiums tax liabilities. The Wisconsin adjusted basis of any investment for which the credit was claimed would have to be reduced by the amount of credit used to offset premium taxes.

Certification of Qualified New Business Ventures. Modify certain criteria used to determine a qualified new business venture for tax years beginning on January 1, 2009. Under current law, in order to be certified, a business must be engaged in, or have committed to engage in, manufacturing, agriculture, or processing or assembling products and conducting research and development or developing a new product or business process. Under the act, the statutes would instead require that the business has the potential for increasing jobs in this state, increasing capital investment in this state, or both, and any of the following apply:

a. It is engaged in, or has committed to engage in, innovation in any of the following: (1) manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology; (2) processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying proprietary technology; or (3) services that are enabled by applying proprietary technology.

b. It is undertaking precommercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying proprietary technology.

In addition, current law prohibits a business from being certified if it is engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable resource. The act specifies that a business could be certified as long as it is not primarily engaged in these activities.

Limit on Investments Received by QNBVs. Increase the maximum limit on the amount of investments that qualified for angel investment or early stage seed investment tax credits that a QNBV could receive from $1.0 million to $4.0 million for tax years beginning after December 31, 2007, and before January 1, 2011, and to $8.0 million for tax years beginning after December 31, 2010.

Annual Limits on Credits. Increase the maximum amount of angel investment tax credits that could be claimed in a tax year from $5.5 million to $18.0 million, plus an additional $250,000 for tax credits claimed for investments in nanotechnology businesses, for tax years beginning after December 31, 2010. Increase the maximum amount of early stage seed investment tax credits that could be claimed in a tax year from $6.0 million to $18.5 million, plus an additional $250,000 for investments in nanotechnology businesses, for tax years beginning after December 31, 2010.

Aggregate Limit on Early Stage Seed Credits. Eliminate the current limit of $52,500,000 on the total amount of early stage seed credits that may be claimed for all taxable years combined.

Authority to Transfer Early Stage Seed Credit. Permit persons eligible to claim early stage seed investment tax credits to sell or transfer the credits to another person subject to the state individual income, corporate income and franchise, or insurance premiums taxes, beginning with tax years starting on January 1, 2009. In order to sell or transfer the tax credits, a person would be required to obtain prior authorization from the investment fund manager, and the manager would be required to notify the Departments of Revenue and Commerce of the transfer, and submit a copy of the transfer documents with the notification. A person could only sell or otherwise transfer a credit once in a twelve month period. Commerce could charge any person selling or otherwise transferring a credit a fee of 1% of the credit amount sold or transferred. All fees collected would be placed in the Department's Wisconsin development fund administration appropriation.

Content of Applications for Certification. Require that businesses or fund managers applying to Commerce for certification specify in the application the investment amount they wish to raise and authorize the Department to certify the business or fund manager, and determine the amount of investment that qualified for the tax credit.

These provisions would have no fiscal effect in 2008-09 or 2009-10, because the annual limits on tax credit claims would not be changed until tax year 2011. However, the administration estimates that individual income and corporate income and franchise tax revenues would decease by $7,000,000 in 2010-11, reflecting the increase in the limit on annual tax credit claims beginning with tax year 2011.

The early stage business investment program established the angel investment tax credit and early stage seed investment tax credit intended to increase investment in start-up and early stage businesses by venture capitalists and angel investors. The angel investment tax credit provides a credit for an angel investment in a certified business (qualified new business venture), while the early stage seed tax credit provides a credit for an investment by a fund manager in a certified business. The Department of Commerce has administrative responsibilities related to eligibility, certification of qualified businesses and fund managers, verification, and reporting requirements for the Department and investors.

Qualified New Business Ventures. In order to qualify for the tax credits, an investment must be made in a certified business or "qualified new business venture." To be certified, a business must submit an application to Commerce in each tax year for which the business wants to be certified. A business may be certified by the Department and maintain its certification as a qualified new business venture only if it satisfies all of the following statutory criteria:

a. It has its headquarters in this state.

b. At least 51% of the employees employed by the business are employed by the state.

c. It is engaged in, or has committed to engage in, one of the following: (1) developing a new product or business process; or (2) manufacturing, agriculture, or processing or assembling products, and conducting research and development.

d. It is not engaged in: real estate development; insurance; banking; lending; lobbying; political consulting; professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants; wholesale or retail trade; leisure; hospitality; transportation; or construction. However, businesses engaged in construction of power production plants that derive energy from renewable resources are eligible for angel investment tax credits.

e. It has not received more than $1.0 million in aggregate investments that have qualified for angel investment tax credits.

f. It has not received aggregate private equity investment of more than $10 million.

Angel Investment Tax Credit. The angel investment tax credit is provided under the state individual income tax, and is equal to 12.5% of the claimant's bona fide angel investment made directly in a qualified new business venture in a tax year. The 12.5% tax credit can be claimed for two years, beginning with the tax year as certified by Commerce. Consequently, the total tax credit is 25% of the amount invested. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. The maximum amount of a claimant's total investment that may be used as a basis for an angel investment tax credit is $2.0 million for each investment made directly into a certified business. The maximum aggregate amount of angel investment tax credits that may be claimed for a tax year is $5.5 million. The maximum total amount of tax credits that can be claimed for all tax years is $47.5 million. Also, the maximum total amount of investment in a qualified new business venture that qualifies for tax credits is $4 million, of which no more than $1 million can come from angel investors.

Early Stage Seed Investment Tax Credit. The early stage seed investment credit is provided under the individual income and corporate income and franchise taxes and is equal to 25% of the claimant's investment paid in the tax year to a certified fund manager that the fund manager invests in a business certified by Commerce (qualified new business venture). Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. Up to $2 million in aggregate investment by a certified fund manager in a certified business qualifies for tax credits. The maximum aggregate amount of early stage seed investment tax credits that can be claimed for a tax year is $6.0 million. The maximum total amount of tax credits that can be claimed for all tax years is $52.5 million.

[Act 2 Sections: 9, 101 thru 105, 152, 153, 196, 197, 219, 223, 224, 789 thru 797, and 9310(1)]

3. DAIRY COOPERATIVE MANUFACTURING FACILITY INVESTMENT TAX CREDIT

	2008-09	2009-11
GPR	$0	$1,300,000

Create a refundable dairy manufacturing facility investment tax credit, based on the current dairy manufacturing facility credit, that could be claimed by members of dairy cooperatives or unincorporated cooperative associations under the state individual income and corporate income and franchise taxes. The tax credit would equal 10% of the amount paid in a tax year by the cooperative for dairy manufacturing modernization or expansion related to the cooperative's manufacturing operation. The tax credit could be claimed for tax years beginning after December 31, 2008, and before January 1, 2017.

The maximum aggregate amount of tax credits that members of a dairy cooperative could claim would be $200,000, for each of the entity's manufacturing facilities, and a credit could not be claimed for expenses that were deducted as trade or business expenses. [The $200,000 per facility limit would also be made applicable to partnerships, limited liability corporations (LLCs), and tax-option corporations.] If the allowable credit claim exceeded the taxes otherwise due on the dairy cooperative member's income, the amount of credit claim that was not used to offset tax due would be certified by DOR to DOA for payment by check, share draft, or other draft from a GPR sum sufficient appropriation that would be created under these provisions. The total amount of tax credits that could be claimed by members of dairy cooperatives would be limited to $600,000 for fiscal year 2009-10 and to $700,000 for subsequent fiscal years.

A dairy cooperative could not directly claim the tax credit, but eligibility for, and the amount of the credit that could be claimed by its members, would be based on the entity's payment of eligible expenses, subject to the $200,000 per facility limit on the total amount of tax credits that could be claimed. A dairy cooperative would be required to compute the amount of the credit that each of its members could claim and provide that information to them. Members of the cooperative could claim the credit in proportion to the amount of milk each member delivers to the cooperative, as determined by the cooperative.

In order for its members to claim the credit, a dairy cooperative would have to apply to the Department of Commerce for certification and allocation of the credit. Commerce would certify eligible claimants and allocate credits in a manner that most likely promotes economic development. Commerce could prorate some or all of the credit allocations in order to broaden the potential for promoting economic development.

Current law definitions related to the dairy manufacturing facilities tax credit would apply to dairy cooperatives. "Dairy manufacturing modernization or expansion" is defined as constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for dairy manufacturing, including the following, if used exclusively for dairy manufacturing:

a. Building construction, including storage and warehouse facilities.

b. Building additions.

c. Upgrades to utilities, including water, electric, heat, and waste facilities.

d. Milk intake and storage equipment.

e. Processing and manufacturing equipment, including pipes, motors, pumps, valves, pasteurizers, homogenizers, vats, evaporators, dryers, concentrators, and churns.

f. Packaging and handling equipment, including sealing, bagging, boxing, labeling, conveying, and product movement equipment.

g. Warehouse equipment, including storage racks.

h. Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment that uses waste to produce energy, fuel, or industrial products.

i. Computer software and hardware used for managing the claimant's dairy manufacturing operation, including software and hardware related to logistics, inventory management, and production plant controls.

"Dairy manufacturing" means processing milk into dairy products or processing dairy products for sale commercially. "Used exclusively" means used to the exclusion of all other uses, except for use not exceeding 5% of total use.

"Dairy product" means a value-added, saleable product resulting from processing milk or another dairy product, and includes: beverage milk products; soft milk products such as yogurt, ice cream and cottage cheese; cheese; butter; non-fat dried milk; whole milk powder; dried whey; whey protein concentrate or isolates; casein; and dairy waste that can be used to produce energy, fuel, and industrial products. "Milk" means the lacteal secretion of cows, sheep, or goats.

"Eligible capital investment" includes all expenses incurred in the acquisition, construction, or improvement of buildings or facilities, and the purchase price of depreciable personal property or equipment.

The act also includes a provision that requires all claimants (cooperatives and non-cooperatives) of dairy manufacturing facility investment tax credits to submit, with the tax return, a copy of the Department of Commerce credit certification and allocation.

These provisions would have no fiscal effect in 2008-09. However, the dairy cooperative manufacturing investment tax credit would increase GPR expenditures by an estimated $600,000 in 2009-10 and $700,000 in 2010-11.

2007 Wisconsin Act 20 created a refundable dairy manufacturing facility investment tax credit under the state individual income and corporate income and franchise taxes. A person who intends to claim a dairy manufacturing facility investment tax credit must apply to Commerce for certification and allocation of the credit. Each application must be made on a Department-prescribed form, and must include a Department of revenue schedule DM listing the applicant's eligible expenses for the project. Each application is also required to include all of the following information:

a. A description of the business operations of the applicant, in relation to the project.

b. A description of what the project is.

c. A description of how the project will promote economic development.

d. Any other information that Commerce deems is necessary to evaluate applications and allocate credits.

e. Any subsequent clarification requested by Commerce.

The application must be completed and either post-marked or delivered to Commerce: (a) no sooner than the completion of the claimant's tax year in which the costs incurred on Schedule DM were incurred; and (b) no later than March 31 of the subsequent tax year, unless Commerce extends the deadline. No application can include costs incurred in tax years beginning on or after January 1, 2015.

Commerce will certify eligible claimants and allocate credits in manner that most likely promotes economic development. In determining the allocation of tax credits Commerce is required to consider the following factors:

a. The jobs created by the project.

b. The salaries, wages, and other employee benefits of the jobs created by the project.

c. The impact of the project on the dairy industry in Wisconsin.

d. The extent to which the area served by the project is economically distressed.

e. The amount of new, eligible capital investment in the project.

f. The impact of the project on business in Wisconsin.

g. Any previous assistance from Commerce.

Commerce may prorate some or all of credit allocations in order to broaden the potential for promoting economic development. Commerce is required to notify each applicant of the outcome of the application, and the Department of Revenue of every taxpayer that is certified for tax credits. Dairy manufacturing facility investment tax credit claims must include: (a) a copy of the certification for tax credits; (b) the employer's tax identification number; and (c) the North American Industry Classification System code (NAICS) for the certified applicant.

The current dairy manufacturing facility investment tax credit can be claimed under the state individual income and corporate income and franchise taxes, and is equal to 10% of the amount paid in a tax year by a claimant for dairy manufacturing modernization or expansion related to the claimant's dairy manufacturing operation. The tax credit can be claimed for tax years beginning after December 31, 2006, and before January 1, 2015. The maximum aggregate amount of tax credits that a claimant can claim is $200,000, and a credit cannot be claimed for expenses that were deducted as trade or business expenses. If the allowable credit claim exceeds the taxes otherwise due on the claimant's income, the amount of credit claim that is not used is refundable. The total amount of tax credits that can be claimed is limited to $600,000 for fiscal year 2007-08, and to $700,000 for subsequent fiscal years.

Partnerships, LLCs, and tax-option corporations cannot claim the tax credit, but eligibility for, and the amount of the credit, is based on the entity's payment of eligible expenses, subject to the $200,000 limit on the maximum aggregate amount of tax credits that a single entity can claim. A partnership, LLC, or tax-option corporation is required to compute the amount of the credit that each of its partners, members, or shareholders can claim and provide that information to them. Partners, members of LLCs, and shareholders of tax-option corporations can claim the credit in proportion to their ownership interest.

Generally, cooperatives are not subject to state income taxes. Taxes are paid by individual cooperative members on distributed profits under the individual income tax. The unrelated business income tax can be imposed on income derived from non-member business.

[Act 2 Sections: 18, 19, 90 thru 99, 137 thru 146, 181 thru 190, 798, and 799]

4. MEAT PROCESSING FACILITY TAX CREDIT

	2008-09	2009-11
GPR	$0	$1,000,000

Create a refundable meat processing facility investment tax credit, under the state individual income and corporate income and franchise taxes, equal to 10% of the amount the claimant paid in the tax year for meat processing modernization or expansion related to the claimant's meat processing operation. The tax credit could be claimed for tax years beginning after December 31, 2008 and before January 1, 2017. The maximum aggregate amount of meat processing facility investment tax credits that could be claimed by a claimant would be $200,000, and a credit could not be claimed for expenses that were deducted as trade or business expenses. If the allowable credit claim exceeded the taxes otherwise due under the income or franchise tax, the amount of credit claim not used would be refundable. The refundable amounts would be paid from a sum sufficient GPR appropriation that are created under the act. The total amount of tax credits that could be claimed would be limited to $300,000 in 2009-10 and $700,000 in 2010-11 and thereafter.

Partnerships, limited liability companies (LLCs), and tax-option corporations could not claim the tax credit, but eligibility for, and the amount of, the credit would be based on the entity's payment of eligible expenses, subject to the $200,000 limit on the maximum aggregate amount of tax credits that a single entity could claim. A partnership, LLC, or tax-option corporation would be required to compute the amount of the credit that each of its partners, members, or shareholders could claim and provide that information to them. Partners, members of LLCs, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interest.

If two or more persons owned or operated a meat processing operation, each person could claim the dairy manufacturing facility investment tax credit in proportion to his or her ownership interest, subject to the aggregate total credit limit of $200,000.

The Department of Commerce would be required to implement a program to certify a taxpayer as eligible for the meat processing facility investment tax credit. If Commerce certified a taxpayer as eligible for the tax credits, Commerce would be required to determine the amount of credits to allocate to the taxpayer, subject to the maximum total credit claims limit of $300,000 in 2009-10 and $700,000 in the following years. Commerce would be required to inform the Department of Revenue (DOR) of each taxpayer that was certified, and of the amount of tax credits allocated to the taxpayer. Commerce, in consultation with DOR, would have to promulgate rules to administer tax credit certification. Claimants would be required to submit, with the tax return, a copy of the Department of Commerce tax credit certification and allocation. The Department of Revenue would be authorized to administer the tax credits under state income and franchise tax administrative provisions.

"Meat processing" would mean processing livestock into meat products or processing meat products for sale commercially.

"Meat processing modernization or expansion" would be defined as constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for meat processing, including the following, if used exclusively for meat processing and if acquired and placed in service in this state during taxable years that begin after December 31, 2008, and before January 1, 2017:

a. Building construction, including livestock handling, product intake, storage, and warehouse facilities.

b. Building additions.

c. Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities.

d. Livestock intake and storage equipment.

e. Processing and manufacturing equipment, including cutting equipment, mixers, grinders, sausage stuffers, meat smokers, curing equipment, cooking equipment, pipes, motors, pumps, and valves.

f. Packaging and handling equipment, including sealing, bagging, boxing, labeling, conveying, and product movement equipment.

g. Warehouse equipment, including storage and curing racks.

h. Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment that uses waste to produce energy, fuel, or industrial products.

i. Computer software and hardware used for managing the claimant's meat processing operation, including software and hardware related to logistics, inventory management, production plant controls, and temperature monitoring controls.

"Used exclusively" would mean used to the exclusion of all other uses except for use not exceeding 5% of total use.

These provisions would have no fiscal effect in 2009-09. The meat processing facility investment tax credit would increase GPR expenditures by an estimated $300,000 in 2009-10 and $700,000 in 2010-11.

[Act 2 Sections: 17, 85, 100, 109, 112, 113, 114, 132, 147, 165, 169, 177, 191, 207, 541, and 800]

5. BUSINESS DEVELOPMENT TAX INCENTIVES PROGRAM/CESSATION OF ECONOMIC ACTIVITY ZONE PROGRAMS

Create a Business Development in Wisconsin Tax Incentives program that would provide tax credits to eligible persons for conducting specified types of economic development projects in the state. In addition, new activities in the current development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones programs would be discontinued. The airport development zone loan program, administered by the Wisconsin Housing and Economic Development Authority

(WHEDA) would be repealed. (WHEDA has not made any loans under the program.)

Under the Business Development in Wisconsin Tax Incentives program, any person could apply to the Department of Commerce on a form prepared by the Department for certification to claim tax benefits. The application would be required to include all of the following:

a. The name and address of the person.

b. The federal tax identification number of the person.

c. The names and addresses of the locations where the person conducts business and a description of the business activities conducted at those locations.

d. A description of each eligible activity conducted or proposed to be conducted by the person.

e. Other information required by Commerce or the Department of Revenue (DOR).

Commerce could certify a person who submitted an application if, after conducting an investigation, the Department determined that the person was conducting or intended to conduct at least one eligible activity. The Department would be required to provide a person that was certified and DOR with a copy of the certification.

A person that conducted or proposed to conduct any of the following activities would be eligible to be certified to claim tax benefits:

a. Job creation project. A project that creates and maintains, for a period of time established by the Commerce by administrative rule, full-time jobs in addition to any existing full-time jobs provided by the person.

b. Capital investment project. A project that involves a significant investment of capital, as defined by the Department by rule, by the person in new equipment, machinery, real property, or depreciable personal property.

c. Employee training project. A project that involves significant investments in the training or reeducation of employees, as defined by Commerce by rule, by the person for the purpose of improving the productivity or competitiveness of the business of the person.

d. Project related to persons with corporate headquarters in Wisconsin. A project that will result in the location or retention of a person's corporate headquarters in Wisconsin, or that will result in the retention of employees holding full-time jobs in Wisconsin, if the person's corporate headquarters are located in Wisconsin.

Commerce could authorize a person that was certified for tax benefits to claim additional tax benefits if, after conducting an investigation, the Department determined any of the following:

a. The person conducts at least one eligible activity in an area designated by Commerce as economically distressed. In designating an area as economically distressed, the Department would be required to follow a methodology established by rule (described below).

b. The person conducted at least one eligible activity that benefits, creates, retains, or significantly upgrades full-time jobs or, that trains, or that reeducates, members of a targeted group.

A person that was certified for tax benefits would be required to enter into a written contract with Commerce that includes provisions that detailed all of the following:

a. A description of each eligible activity being conducted or proposed to be conducted by the person.

b. Whether any of the eligible activities will occur in an economically distressed area, as designated by the Department.

c. Whether any of the eligible activities will benefit members of a targeted group, as determined by Commerce.

d. A compliance schedule that includes a sequence of anticipated actions to be taken or goals to be achieved by the person before the person may receive tax benefits.

e. The reporting requirements with which the person must comply.

f. If feasible, a determination of the tax benefits the person will be authorized to claim, if the person fulfills the terms of the contract.

Commerce could authorize a person to claim tax benefits only after the person submitted a report to the Department that documented, to the satisfaction of the Department, that the person had complied with the terms of the contract and the requirements of any applicable rules promulgated by the Department. Commerce would be required to provide to the person and to the DOR a notice of eligibility to receive tax benefits that reports the amount of tax benefits for which the person is eligible.

A person that was certified and authorized to claim tax benefits could claim the newly-created economic development tax credit under the state individual income, corporate income and franchise, or insurance premiums taxes. The credit could be claimed for tax years beginning after December 31, 2008, and the amount of the tax credit would be determined by Commerce using criteria established by the Business Development in Wisconsin Tax Credits program created under these provisions. Unused tax credit amounts could be carried forward up to fifteen years to offset future tax income and franchise tax liabilities. Claimants would be required to include a copy of the Commerce certification for and notice of eligibility to receive tax benefits with the income franchise or premiums tax return. DOR would administer tax credit claims under statutory income and franchise tax provisions.

Partnerships, limited liability companies, and tax-option corporations could not claim the credit, but the eligibility for, and the amount of the credit, would be based on their authorization to claim tax benefits. A partnership, limited liability company, or tax-option corporation would compute the amount of credit that each of its partners, members, or shareholders could claim and provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interests.

The total amount of tax benefits that could be provided under the Business Development in Wisconsin Tax Incentives program would be limited to the total amount of tax benefits that have been authorized, but not allocated to persons under the development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones programs on the effective date of these provisions. As of February 11, 2009, a total of $65.29 million in authorized zone tax credits was unallocated. Commerce could submit to the Joint Committee on Finance a request in writing to exceed the total amount of unallocated tax benefits, including with the request a justification for seeking an increase. The Committee, following its review, could approve or disapprove an increase in the total tax benefits available to be allocated.

Commerce would be required to revoke the certification of a person who does any of the following:

a. Supplies false or misleading information to obtain certification for tax benefits.

b. Supplies false or misleading information to obtain tax benefits.

c. Leaves the state to conduct substantially the same business outside of the state.

d. Ceases operations in the state and does not renew operation of the business or a similar business within 12 months.

If a claimant's certification is revoked, or if a claimant becomes ineligible for tax benefits, the claimant could not claim credits for the tax year that included the day on which the certification was revoked; the taxable year that included the day on which the claimant became ineligible for tax benefits; or succeeding taxable years and the claimant could not carry over unused credits from previous years to offset income or franchise taxes imposed for the tax year that included the day on which certification was revoked; the taxable year that included the day on which the claimant became ineligible for tax benefits; or succeeding taxable years.

Commerce would be required to annually verify information concerning economic development tax credits submitted to DOR by persons certified for and eligible to receive tax benefits under the program. In addition, the Department would be required to establish, by administrative rule, all of the following:

a. A schedule of hourly wage ranges to be paid, and health insurance benefits to be provided, to an employee by a person certified for tax benefits and the corresponding per employee tax benefit for which a person that was certified may be eligible.

b. A definition of "significant investment of capital" for purposes of a capital investment project, together with a corresponding schedule of tax benefits for which a person who is certified for tax benefits and who conducts a capital investment project could be eligible. The Department would be required to include in the definition a schedule of investments that would take into consideration the size or nature of the business.

c. A definition of "significant investments in the training or reeducation of employees" for purposes of an employee training project, together with a corresponding schedule of tax benefits for which a person who is certified for tax benefits and who conducted an employee training project may be eligible.

d. A schedule of tax benefits for which a person would be eligible who is certified for tax benefits and who conducts a project that will result in the location or retention of a person's corporate headquarters in Wisconsin.

e. The methodology for designating an area as economically distressed. The methodology would have to require the Department to consider the most current data available for the area and for the state on the following indicators: (1) unemployment rate; (2) percentage of families with incomes below the poverty line established under federal law; (3) median family income; (4) median per capita income; (5) average annual wage; (6) real property values; and (7) other significant or irregular indicators of economic distress, such as a natural disaster.

f. A schedule of additional tax benefits for which a person would be eligible who is certified for tax benefits and who conducts an eligible activity in economically distressed areas and/or that benefits members of targeted groups.

g. Reporting requirements, minimum benchmarks, and outcomes expected of a person certified for tax benefits before that person may receive tax benefits.

h. Policies, criteria, and methodology for allocating a portion of the tax benefits available to rural areas.

i. Policies, criteria, and methodology for allocating a portion of the tax benefits available to small businesses.

j. Policies and criteria for certifying a person who would be eligible for tax benefits greater than or equal to $3,000,000.

k. Procedures for implementing the Business Development in Wisconsin Tax Incentives program.

Commerce would be authorized to promulgate emergency rules that would remain in effect until July 1, 2010, or the date on which permanent rules took effect, whichever was sooner. The Department would not be required to provide evidence that promulgating these rules as an emergency rules was necessary for the preservation of the public peace, health, safety, or welfare and would not be required to provide a finding of emergency. If the Secretary of Administration required Commerce to prepare an economic impact report for the rules required under the provisions of the act, the Department could submit the proposed rules to the Legislature for review before Commerce completed the economic impact report and before the Department received a copy DOA approval of the report.

Six months after the required annual economic development assistance report was submitted, Commerce would be required to submit to the Joint Legislative Audit Committee and to the appropriate standing committees of the Legislature a comprehensive report that assessed the Business Development in Wisconsin Tax Incentives program, including updated information related to the program.

Under the program "full-time job" would continue to be defined as a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and benefits that are not required by federal or state law. "Full-time job" does not include initial training before an employment position begins. However, The Department could, by rule, specify circumstances under which the Department could grant exceptions to the requirement that a full-time job means a job in which an individual, as a condition of employment, is required to work at least 2,080 hours per year. Under no circumstances could a full-time job mean a job in which an individual, as a condition of employment, was required to work less than 37.5 hours per week.

"Member of a targeted group" would mean a person who resides in an area designated by the federal government as an economic revitalization area, a person who is employed in an unsubsidized job but meets the eligibility requirements under state law for a Wisconsin Works (W-2) employment position, a person who is employed in a trial job, or in a real work, real pay project position under W-2, a person who is eligible for child care assistance, a person who is a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income recipient, a general assistance recipient, an economically disadvantaged ex-convict, a dislocated worker, as defined under federal law, or a food stamp recipient, if the person has been certified by a designated local agency under federal law.

The Legislative Audit Bureau (LAB) would be required to prepare a financial and performance evaluation audit of the Business Development in Wisconsin Tax Incentive program, and file a copy of the report with the Joint Legislative Audit Committee, the appropriate standing committees of the Legislature, and the Joint Committee on Legislative Organization, by July 1, 2014.

On or after the effective date of the act, there could be no new activities related to receiving tax benefits in development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones. Specifically, on or after the effective date of the act, new zones could not be designated and persons could not be certified for tax benefits under all of these zone programs. Commerce could not accept or approve applications, project, or business plans under the enterprise development zone and airport development zone programs. Commerce could not designate an incubator as part of a zone, accept boundary change applications, accept designation extension applications, or increase the zone limit on tax benefits in development zones. Local governments could not make any determination regarding the relocation of businesses within development zones.

The administration estimates, that because the total amount of tax credits that can be claimed has not been increased, there would be no fiscal effect resulting from creation of the new tax credit program, and cessation of existing economic activity zone tax credit programs.

Wisconsin has numerous programs that provide tax credits to businesses for various types of economic activity in designated areas of the state. These programs include: (a) development zones; (b) enterprise development zones; (c) development opportunity zones; (d) technology zones; (e) agricultural development zones; (f) airport development zones; and (g) enterprise zones. The Department of Commerce is generally authorized to designate or approve, and to administer the various zone programs. Commerce also verifies or certifies expenditures and/or claimants as eligible to claim tax credits. Each of these zone programs provides certain tax credits to eligible businesses operating in the zones.

Development Zones. Development zones are designated areas in municipalities and counties, or American Indian reservations that meet certain economic distress criteria, such high employment, and low incomes. The program includes 22 zones, including zones that encompass 17 entire counties and two American Indian reservations. A total of $38.155 million in tax credits can be claimed under the program, and $33.4 million has been allocated to businesses in the zones. Eligible businesses in the zones can claim the development zones jobs and environmental remediation tax credit.

Enterprise Development Zones. Enterprise development zones provide tax credits to new or expanding business projects that will affect areas that meet economic distress criteria. The program has authorized 98 zones, including 10 zones for environmental remediation projects, to be designated in municipalities and counties. Commerce administers the program by pooling unallocated tax credits, and allocating a portion of the total to each project that is designated. A total of $258.0 million in tax credits has been allocated to businesses in the zones. Businesses in the zones can claim the development zones jobs and environmental remediation tax credit.

Technology Zones. Technology zones are relatively large areas of the state designated to provide tax credits to high-tech or technology-based businesses. A total of eight technology zones have been designated encompassing 54 counties. The maximum amount of tax credits that can be claimed in each zone is $5 million. However, under provisions enacted by 2007, Wisconsin Act 183, up to $6.0 million in unallocated airport development zone tax credits can be allocated to technology zones for which the $5.0 million tax credit limit is insufficient. A total of $24.3 million in tax credits have been allocated to businesses in the zones. Eligible businesses can claim technology zones tax credits for jobs created, capital investments, and property taxes paid.

Agricultural Development Zone. The agricultural development zone includes rural, low-population counties and provides tax credits to agricultural businesses. Eighteen counties (not designated as technology zones) have been designated as an agricultural development zone. The maximum amount of tax credits that can be claimed in the zone is $5 million. However, up to $6.0 million in unallocated airport development zones tax credits can be allocated to the agricultural development zone, if the $5.0 million tax credit allocation is insufficient. A total of $3.5 million in tax credits have been allocated to businesses in the zone. Agricultural businesses in the zone can claim development zones capital investment tax credits and the jobs and environmental remediation tax credit.

Airport Development Zones. Airport development zones were created by 2005 Wisconsin Act 487, and may be designated in areas that include airports that have certain primary and secondary runway lengths. Businesses that locate or expand operations, increase employees, or increase investment in the zone are eligible for tax credits. The maximum amount of tax credits that can be claimed in a zone is $3 million and the maximum total amount of tax credits that can be claimed through the program is $9 million. As noted, up to $6.0 million in unallocated airport development zone tax credits can be allocated to technology zones or the agricultural development zone. Businesses in airport development zones can claim the development zones capital investment tax credit and the consolidated jobs and environmental remediation tax credit.

The act does not modify the development opportunity zone or enterprise zone programs.

[Act 2 Sections: 1, 2, 42, 84, 89, 112, 136, 159 thru 164, 180, 201 thru 206, 222, 224, 758, 760, 761, 764, 766, 768, 776, 780, 781, 801 thru 846, and 9110(4)&(5)]

6. IMPOSE SALES TAX ON DIGITAL PRODUCTS

	2008-09	2009-11
GPR-REV	$0	$10,900,000

Impose the state sales and use tax on certain digital products that would be subject to the tax if furnished in tangible form. Specify that the proposal would take effect on October 1, 2009.

Under current law, the 5% state sales and use tax is generally imposed on the gross receipts from the sale and rental of tangible personal property. In addition, the tax is specifically imposed on the sale and use of selected services. There is no imposition of tax on sales of real property or intangible property, unless the item would fall within one of the services that are subject to Wisconsin sales tax.

With some exceptions, items transferred in electronic form through the Internet are not taxable, even if the item would be taxable if transferred in tangible form (for example, a novel purchased via the Internet in digital format and then printed would not be subject to the tax, whereas the same novel purchased as a paperback book would be subject to the tax). However, current law makes the following exceptions to this general approach:

a. Computer software, excluding custom software, is defined by state law to be tangible personal property for purposes of the sales and use tax, without regard to the form in which it is transferred.

b. Taking photographs, reproducing them in a digital format, and delivering them electronically is a taxable service.

c. Pay-per-view movies, movie channels, and similar means of viewing motion pictures are cable television services that are specifically subject to tax. However, movies downloaded via the Internet may not meet Wisconsin's current definition of cable television service, which requires amplification of the program.

The provision would impose the 5% sales tax on the sales price from the sale, lease, license, or rental of specified digital goods or additional digital goods at retail for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right.

The provision would also impose the 5% use tax on the storage, use, or other consumption of specified digital goods or additional digital goods purchased from any retailer, if the purchaser has the right to use the goods on a permanent or less than permanent basis, and regardless of whether the purchaser is required to make continued payments for such right.

The provision would, however, provide an exemption from the sales and use tax for specified digital goods or additional digital goods, if the sale of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from the tax.

The provision would create the following definitions related to digital goods:

a. "Specified digital goods" would mean digital audio works, digital audiovisual works, and digital books. The provision would specify that the sale of or the storage, use, or other consumption of a digital code (as defined below) would be treated the same as the sale of or the storage, use, or other consumption of any specified digital goods for which the digital code relates.

b. "Additional digital goods" would mean all of the following, if they are transferred electronically: greeting cards, finished artwork, periodicals, and video or electronic games. The provision would specify that, for sales and use tax purposes, the sale, storage, use, or other consumption of a digital code (as defined below) would be treated the same as the sale, storage, use, or other consumption of any additional digital goods for which the digital code relates.

c. "Digital audio works" would mean works that result from the fixation of a series of musical, spoken, or other sounds that are transferred electronically, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, ringtones, or other sound recordings, but not including audio greeting cards sent by electronic mail.

d. "Digital audiovisual works" would mean a series of related images that, when shown in succession, impart an impression of motion, along with accompanying sounds, if any, that are transferred electronically. "Digital audiovisual works" would include motion pictures, musical videos, news and entertainment programs, and live events, but would not include video greeting cards or video or electronic games.

e. "Digital books" would mean works that are generally recognized in the usual and ordinary sense as books and are transferred electronically. "Digital books" would include any literary work, other than a digital audio work or digital audiovisual work, that is expressed in words, numbers, or other verbal or numerical symbols or indicia, if the literary work is generally recognized in the ordinary and usual sense as a book, work of fiction or nonfiction, or a short story, but would not include newspapers or other news or information products, periodicals, chat room discussions, or blogs.

f. "Digital code" would mean a code that provides the person who holds the code a right to obtain an additional digital good, a digital audiovisual work, digital audio work, or digital book and that may be obtained by any means, including tangible forms and electronic mail, regardless of whether the code is designated as song code, video code, or book code. "Digital code" would include codes used to access or obtain any specified digital goods, or any additional digital goods that have been previously purchased, and promotion cards or codes that are purchased by a retailer or other business entity for use by the retailer’s or entity’s customers. "Digital code" would not include the following: (i) A code that represents any redeemable card, gift card, or gift certificate that entitles the holder of such card or certificate to select any specified digital goods or additional digital goods at the cash value indicated by the card or certificate; or (ii) digital cash that represents a monetary value that a customer may use to pay for a future purchase.

g. "Finished artwork" would mean the final art used for actual reproduction by photomechanical or other processes or for display purposes. "Finished artwork" would also include all of the following items regardless of whether such items are reproduced: drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals, assemblies, charts, graphs, and illustrative materials.

h. "Ringtones" would mean digitized sound files that are downloaded onto a device and that may be used to alert the customer with regard to a communication, but would not including ringback tones or other digital audio files that are not stored on the purchaser’s communication device.

i. "Transferred electronically" would mean accessed or obtained by the purchaser by means other than tangible storage media.

For purposes of determining the location of the sale of a digital good, "receive" would mean taking possession or making first use of digital goods, whichever comes first, and situs would be determined in order as follows:

a. If a purchaser receives the digital good at a seller's business location, the sale occurs at the business location.

b. If a purchaser does not receive the digital good at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, receives the digital good, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

c. If the location of the sale is still in question, the sale is sourced to the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of a sale is not in bad faith.

d. If the location of the sale is still in question, the sale is sourced to the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address is not in bad faith.

e. If the location of the sale is still in question, the sale is sourced to the location from which the digital good was first available for transmission by the seller, not including any location from which the digital good was merely transferred electronically.

The location of a license of a digital good would be determined in the same manner as location of the sale of a digital good; however, if the digital good were moved from the place where the digital good was initially delivered, the subsequent periodic payments on the license would be sourced to the digital good's primary location as indicated by an address for the digital good that would be provided by the licensee and that would be available to the licensor in records that the licensor would maintain in the ordinary course of the licensor's business, if the use of such an address would not constitute bad faith. The location of a license as determined under this provision would not be altered by any intermittent use of the digital good at different locations.

These provisions would take effect on October 1, 2009. The Department of Revenue has estimated that these provisions would result in increased state sales and use tax revenues of $4,200,000 in 2009-10 and $6,700,000 in 2010-11, for a total increase of $10,900,000 in the 2009-11 biennium.

[Act 2 Sections: 218, 225, 226, 229, 235, 237, 240 thru 244, 251, 255, 260, 265, 266, 276, 278 thru 280, 282 thru 292, 295, 297, 298, 300 thru 304, 306, 307, 309, 312 thru 322, 325 thru 327, 330, 331, 339 thru 342, 345, 349, 358 thru 360, 362, 366, 376, 378, 384, 391 thru 394, 396, 397, 400, 402 thru 404, 406, 407, 410, 411, 416, 419, 422, 436, 457, 475, 481, 482, 484 thru 487, 489, 492, 494, 495, 497, 506, 509, 511, 513, 516, 519, 526 thru 528, 531, 533, 536, 537, 539, and 9443]

7. SALES AND USE TAX ON SOFTWARE

	2008-09	2009-11
GPR-REV	$9,400,000	$56,600,000

Modify the definition of taxable computer software under the sales and use tax as described below.

Under current law, computer programs, except for custom programs, are considered "tangible personal property" and are subject to the state sales tax. Sales of custom computer programs are exempt from the sales tax. The Wisconsin Supreme Court's 2008 decision in Wisconsin Department of Revenue v. Menasha Corporation broadened DOR's interpretation of what computer software is considered nontaxable "custom programs." Current administrative rules define "custom programs" as utility and application software designed to accommodate the specific processing needs of the customer. The Department determines whether a computer program is considered a custom program per administrative rules based on all the facts and circumstances, such as (but not limited to) the extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation, whether the program is loaded into the customer's computer by the vendor, and the extent to which the installed program must be tested against the program's specifications.

The act creates the following definitions related to prewritten computer programs:

"Computer" would mean an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

"Computer software" would mean a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

"Computer software maintenance contract" would mean a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, computer software support services, or both.

"Prewritten computer software" would mean computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of computer software would not cause the combination to be other than prewritten computer software. Prewritten computer software would include software designed and developed by the author or other creator to the specifications of a specific purchaser if it were sold to a person other than the specific purchaser. For purposes of this provision, if a person were to modify or enhance computer software of which the person were not the author or creator, the person would be the author or creator only of the person’s modifications or enhancements. Prewritten computer software or a prewritten portion of computer software that is modified or enhanced to any degree, with regard to a modification or enhancement that is designed and developed to the specifications of a specific purchaser, would remain prewritten computer software, except that if there were a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement would not be prewritten computer software.

The definition of "tangible personal property" would be amended to specifically include prewritten computer software rather than specifically exclude custom programs.

According to DOR, the proposed statutory definitions would alter the application of the sales tax in certain transactional cases. First, under current law, the sale of prewritten software from one vendor to a second vendor who will modify and customize the software for their customer is taxable; however, the sale of the prewritten software plus custom changes made by the second vendor, which is resold to the final customer, is exempt. The proposal would make the first sale exempt from the sales tax as a sale for resale, but would tax the final sale to the customer, less any separately-stated charges for program modifications, to the customer. Second, under current law, if a vendor develops prewritten software, modifies the software for the customer to such a degree that the software is a custom program, and sells the software in a single transaction to the end customer, the entire amount of the sale is exempt from the sales tax under the definition of "custom programs." Under the proposal, the sales tax would be imposed on the proceeds of the final sale to the end customer as "prewritten computer software", less any separately-stated charges for program modifications. Finally, if one vendor sells prewritten software to the end customer and a second vendor sells significant modifications related to that prewritten software to the end customer so that the prewritten software purchased by the end customer is now usable by the end customer, under current law, neither the prewritten software nor the modifications are subject to the sales tax. Under the proposal, the sale of the prewritten computer software from the vendor to the end customer would be subject to the sales tax, but the modifications would not be subject to the sales tax.

The proposal takes effect on the day after publication of the act and brings the Wisconsin sales tax code further in line with definitional language used in the Streamlined Sales and Use Tax Agreement. The Department indicates that the definitional changes would extend sales tax collection to the type of software determined to be exempt in the Wisconsin Supreme Court's Menasha decision. Assuming an effective date of March 1, 2009, the proposal would increase state sales tax revenue by an estimated $9,400,000 in 2008-09 and $28,300,000 in 2009-10 and annually thereafter.

[Act 2 Sections: 231 thru 233, 274, 332, 333, 360, and 384]

8. STREAMLINED SALES AND USE TAX

	2008-09	2009-11
GPR-REV	$0	$4,700,000

Modify Wisconsin's sales and use tax laws to conform to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA), effective October 1, 2009.

Background

Under current federal law and U.S. Supreme Court decisions, a state may not require a seller to collect and remit sales and use taxes unless the seller has a sufficient business connection (or "nexus") with the state, which is generally established by the seller having a physical presence in the state. In Wisconsin, a seller has nexus if it does any of the following: (a) owns real property in this state; (b) leases or rents out tangible personal property located in this state; (c) maintains, occupies, or uses a place of business in this state; (d) has any representative or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property or taxable services; (e) services, repairs, or installs equipment or other tangible personal property in Wisconsin; (f) delivers goods into this state in company operated vehicles; or (g) performs construction activities in this state.

Sellers that do not have nexus with Wisconsin can voluntarily agree to collect and remit the tax on their sales to Wisconsin residents. Such agreements also are permitted in other states. In Wisconsin and other states, if a seller does not have nexus and has not voluntarily agreed to collect the tax, the state imposes a use tax on taxable purchases from the seller by persons who store, use, or consume the items in Wisconsin. However, collecting the use tax from individual purchasers presents a very difficult enforcement issue. Multi-state retailers have long resisted efforts by the states, and legislation introduced in Congress, to compel use tax collection, citing the high costs and difficulty of complying with numerous, disparate state and local sales tax systems.

The SSUTA is a multi-state agreement that is the product of the Streamlined Sales Tax Project (SSTP), an effort begun by state revenue departments in March, 2000. The Project's goal is to simplify and modernize sales and use tax administration in the hope that out-of-state businesses without a requirement to collect sales tax will, as a result, voluntarily agree to collect the tax. An additional goal of the Project is to persuade Congress to pass legislation permitting states to require additional out-of-state sellers to collect and remit taxes.

One of the principal aims of the SSUTA is to make sales and use taxes more uniform across states and local taxing jurisdictions. In addition, in order to streamline administration of the tax, states participating in the Agreement jointly certify sales tax service providers and automated systems. Retailers may contract with certified service providers (CSPs) to assume the seller's sales and use tax responsibilities (except for the retailer's obligation to remit tax on the retailer's own purchases) or use certified automated systems (CASs) for tax calculation and record-keeping purposes. Participating states must also maintain databases that retailers use to determine whether a transaction is taxable and the appropriate tax rate based on the taxing jurisdiction to which the transaction is sourced. The Agreement also includes an "amnesty" provision that forgives back taxes for sellers that agree to collect and remit taxes, subject to certain requirements.

Wisconsin was authorized to participate in the development of the SSUTA under 2001 Wisconsin Act 16. The SSUTA was developed by participating states with involvement of various members of the business community. Under the terms of the SSUTA, which was adopted by the participating states in November, 2002, and which has been amended several times since then, the Agreement would become binding when at least 10 states comprising at least 20% of the total population of all states imposing a state sales tax had petitioned for membership and been found to be in compliance with the Agreement's requirements by the Agreement's governing board. The SSUTA became effective on October 1, 2005. At that time, there were 18 member states. As of January 1, 2009, there were 22 member states, and about 1,100 sellers had voluntarily registered under the SSUTA to collect and remit sales and use tax in those states.

In order to become a member state and to collect tax from voluntary registrants under the SSUTA, Wisconsin would have to modify certain aspects of its sales and use tax laws, including provisions related to uniformity with other states as well as provisions related to sales tax administration. The SSUTA does not require participating states to have identical tax bases. However, the Agreement does require states to use uniform definitions in establishing their tax bases and also requires uniform treatment of certain items such as sourcing of transactions and treatment of drop-shipments. As a result of such uniformity provisions, under the SSUTA, certain items that are currently taxable in Wisconsin would be exempt (for example, fruit drink with 51% to 99% juice or any candy containing flour) and certain sales that are currently exempt would be taxable (for example, ready-to-drink tea and marshmallows).

In terms of the administrative requirements under the SSUTA, examples include that states must provide certain databases, provide monetary compensation to sellers voluntarily registering to collect and remit tax, follow the use of uniform rounding rules and uniform tax return requirements, and provide tax amnesty (under specified conditions) for sellers registering to collect tax under the SSUTA.

The following summary highlights the most significant changes to state law under the act to conform state sales and use tax statutes to the provisions of the SSUTA.

Duties and Responsibilities of the Department of Revenue

2001 Act 16 authorized DOR to enter into the Streamlined Sales and Use Tax Agreement to simplify and modernize sales and use tax administration in order to reduce the tax compliance burden for all sellers and all types of commerce. DOR may promulgate rules to administer the provisions, procure goods and services jointly with other states that are signatories to the Agreement in furtherance of the Agreement, and take other actions reasonably required to implement these provisions.

Current law also authorizes the Department to act jointly with other states that are signatories to the Agreement to establish standards for the certification of certified service providers and certified automated systems and to establish performance standards for multi-state sellers. A "certified service provider" is an agent that is certified by the signatory states to perform all of a seller's sales tax and use tax functions related to the seller's retail sales. A "certified automated system" is software that is certified by the signatory states and that is used to calculate state and local sales and use taxes on transactions by each appropriate taxing jurisdiction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

Current law provides that a certified service provider is the agent of the seller with whom the provider has contracted and is liable for the sales and use taxes that are due the state on all sales transactions that the CSP processes for a seller, except in cases of fraud or misrepresentation by the seller. A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a CAS is responsible and liable to this state for reporting and remitting sales and use tax. A seller that has a proprietary system for determining the amount of tax due and that has signed an agreement with the signatory states establishing a performance standard for the system is liable for the system's failure to meet the performance standard.

Current state law also provides that no law of this state, or the application of such law, may be declared invalid on the ground that the law, or the application of such law, is inconsistent with the SSUTA. No provision of the Agreement in whole or in part invalidates or amends any law of this state and the state becoming a signatory to the Agreement does not amend or modify any law of this state.

The act requires and authorizes DOR to participate as a member state of the SSTP governing board, which administers the SSUTA and enters into contracts that are necessary to implement the Agreement on behalf of the member states, and to pay the dues necessary to participate in the governing board of the multistate SSTP.

Under current law, DOR may not enter into the SSUTA unless the Agreement requires signatory states to meet certain requirements. The act adds the requirement that signatory states must provide that a seller who registers with the Agreement's central electronic registration system may cancel the registration at any time, as provided under uniform procedures adopted by the governing board of the states that are signatories to the Agreement, but is required to remit any Wisconsin taxes collected pursuant to the Agreement to DOR.

Under the act, DOR is authorized to certify compliance with the SSUTA and, pursuant to the Agreement, certify certified service providers and certified automated systems. The act modifies the current law definition of a CSP to provide that a CSP is not responsible for a retailer's obligation to remit tax on the retailer's own purchases. The Department would also be authorized to maintain databases that indicate: (a) whether specific items are taxable or nontaxable; and (b) tax rates, taxing jurisdiction boundaries, and zip code or address assignments related to the administration of state and local taxes imposed in Wisconsin. These databases would have to be accessible to sellers and CSPs and the databases referred to in "b" would have to be available in a downloadable format.

The act also specifically permits DOR to audit (or authorize others to audit) sellers and certified service providers who are registered with the Department pursuant to the SSUTA.

Modifications to the Tax Base

The sales tax base is the array of goods, services, and transactions that are subject to the tax. The SSUTA does not require participating states to have identical tax bases. However, the Agreement does require states to use uniform definitions in establishing their tax bases. The act includes the following changes to the current sales and use tax base in Wisconsin:

- Most types of food sales would be treated the same as under current law. However, some food sales that are now exempt would become taxable and certain sales that are now taxable would become exempt.

- The act expands the types of medical equipment that are exempt from tax to include durable medical equipment such as hospital beds, patient lifts, and I.V. stands that are purchased for in-home use.

- The act expands the types of mobility enhancing equipment and prosthetic devices exempt from tax, including certain canes, handrails, and grab bars to assist in rising from a commode, tub, or shower; tub and shower stools; ankle braces; and arch supports.

- The act eliminates the current exemption for antiembolism elastic hose.

- The current exemptions for equipment used in the treatment of diabetes and equipment used to administer oxygen would be limited to equipment purchased for in-home use.

- The act repeals the current exemption for cloth diapers.

- The act generally imposes the tax on the entire sales price of products comprised of exempt items that are bundled with taxable items by the seller. However, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records, the portion of the price that is attributable to nontaxable products, that portion of the sales price would not be taxable. Currently, the seller is not required to pay tax on the value of the nontaxable items. Certain exceptions would apply to the general treatment of bundled transactions, such as an exception for transactions in which the value of the taxable products is no greater than 10% of the value of all the bundled products. The act also excludes from treatment as bundled transactions certain goods packaged and sold together containing food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies if the value of the nontaxable items is at least 50% of the value of all of the tangible personal property included (in what would otherwise be a taxable, bundled transaction). In such cases, the entire bundle of goods would be exempt from tax. This treatment is similar to the treatment of certain combinations of nontaxable food, food products, and beverages with taxable items under current law.

- Under the act, if tangible personal property (such as a construction crane) is provided along with an operator, the transaction would be considered a service (which may or may not be taxable) rather than a lease (which generally is taxable) as long as the operator is necessary for the property to perform in the manner for which it is designed and the operator does more than maintain, inspect, or set up the property. Under current law, the determination of whether such transactions are a lease of property or a service depends upon the amount of control maintained by the operator and the degree of responsibility for completion of the work assumed by the operator.

- Purchases of items (such as telephone directories or candy) that are sold by an out-of-state seller to a Wisconsin purchaser and distributed directly by the seller by common carrier or U.S. mail to Wisconsin locations without the purchaser ever taking possession of the items would become taxable regardless of whether or not the out-of-state seller has nexus with Wisconsin. Under current law, as interpreted by the courts, such sales are not subject to the sales or use tax if the seller is located out-of-state and does not have nexus with Wisconsin.

- The act defines a "prepaid wireless calling service" as a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined dollar units whereby the number of units declines with use in a known amount. Based on this definition, if an otherwise nontaxable nontelecommunications service were purchased through a prepaid wireless calling service and sourced to this state under the sourcing rules, then the service would be subject to the tax imposed on a prepaid wireless calling service.

According to DOR, all of these modifications are required in order to conform to the terms of the SSUTA Agreement.

Non-Exempt Use of Property After Purchase

Currently, if a purchaser certifies that the items purchased will be used in a manner entitling the sale to be exempt from tax and the purchaser subsequently uses the property in some other manner, the purchaser is liable for payment of the sales tax. The tax is measured by the sales price of the property to the purchaser unless the taxable use first occurs more than six months after the sale. In that case, the purchaser may base the tax either on that sales price or on the fair market value of the property at the time the taxable use first occurs. The act eliminates the option to base the tax on fair market value if the taxable use first occurs more than six months after the purchase, so that the tax would always be based on the sales price to the purchaser.

Treatment of Drop-Shipments

A Wisconsin "drop-shipment" occurs when a purchaser located in Wisconsin orders an item from an out-of-state retailer not registered to collect Wisconsin sales or use tax and the product is delivered to the customer directly from a Wisconsin manufacturer, without the retailer taking possession. Under current law, the Wisconsin manufacturer is required to collect the sales tax from the purchaser on such transactions. Under the act, Wisconsin manufacturers would no longer be liable for the sales tax on drop-shipments to Wisconsin purchasers. Instead, the purchaser would be liable for use tax.

Sourcing

The act includes detailed provisions for determining the taxing jurisdiction to which a sale or lease of property or services is sourced. In general, the sourcing rules under these provisions are destination-based, which is consistent with the current sourcing provisions in Wisconsin. However, the Department of Revenue has identified several situations where the SSUTA provisions would differ from current law and practice. The most significant change would be to relieve sellers (printers) of direct mail of the burden of determining the destination of each piece of mail for tax purposes if the purchaser does not provide this information. Other sourcing changes involve towing services, admissions, leases, software and services (such as cable television) delivered electronically, and certain telecommunications services. The Department would be granted rule-making authority with regards to the sourcing of sales by florists.

Agreements With Direct Marketers; Retailer's Compensation

Under current law, sellers may deduct the retailer's discount from taxes due as compensation for administrative costs. The retailer's discount is equal to 0.5% of the tax liability per reporting period, with a $10 minimum. Also, under current law, DOR may enter into agreements with out-of-state direct marketers to collect state and local sales and use taxes. An out-of-state direct marketer that collects such taxes may retain 5% of the first $1 million of the taxes collected in a year and 6% of the taxes collected in excess of $1 million in a year. This provision does not apply to direct marketers who are required to collect sales and use taxes in Wisconsin because they have nexus with this state. To date, no agreements have been entered into under this provision.

The act repeals the current provisions regarding agreements with direct marketers. Instead, the following persons could retain a portion of sales and use taxes collected on retail sales in an amount determined by DOR and by contracts that the Department enters into pursuant to the SSUTA: (a) certified service providers; (b) sellers that use a certified automated system; and (c) large, multi-state sellers that have a proprietary system that calculates the amount of tax owed to each taxing jurisdiction. Under the compensation formulas currently in use, a CSP would be permitted to retain from 2% to 8% of taxes collected on behalf of voluntary sellers, depending on the total volume of such taxes collected. A CSP would not be eligible for the retailer's discount. A seller using a CAS would be eligible for the retailer's discount. In addition, to help compensate for the investment in software to assist the retailer in voluntarily collecting taxes in non-nexus states, such sellers would be permitted to retain 1.5% of the first $10,000 in taxes collected per year for each non-nexus state for a period of two years. Additional compensation for large, multi-state sellers with proprietary systems ("c", above) has not yet been determined.

Under the act, there would be no statutory limit on the amount of compensation paid to the persons described under "a" through "c," above. Also, such compensation could be paid to any in-state sellers, out-of-state sellers that have nexus with Wisconsin, and out-of-state sellers that do not have nexus, as long as such sellers satisfied the conditions applicable to the persons described under "a" through "c." Sellers that do not meet the above criteria would continue to receive the regular 0.5% retailer's discount.

"Amnesty" Provision

Under the act, a seller would not be liable for uncollected and unpaid state and local sales and use taxes (including penalties and interest) on previous sales made to Wisconsin purchasers if the seller registers with DOR to collect and remit state and local sales and use taxes on such sales in accordance with the SSUTA. In order to receive amnesty, the seller would have to: (a) register within one year after the effective date of this state's participation in the Agreement; and (b) collect and remit state and local sales and use taxes on sales to purchasers in this state for at least three consecutive years after the date on which the seller registers.

The amnesty would not be available to: (a) sellers that were already registered with DOR during the year immediately preceding the effective date of Wisconsin's participation in the Agreement; (b) sellers that are being audited by DOR; or (c) sellers that have committed or been involved in a fraud or an intentional misrepresentation of a material fact.

Erroneous Collection of Tax

The act establishes a procedure to settle disputes between purchasers and sellers regarding erroneous collections of sales or use tax. Under this procedure, customers who believe that the amount of sales or use tax assessed on a sale is erroneous could send a written notice to the seller requesting that the alleged error be corrected. The seller would have to review its records within 60 days to determine the validity of the customer's claim. If the review indicates that there is no error as alleged, the seller would have to explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the seller would have to correct the error and refund the amount of any tax collected erroneously, along with the related interest. A customer could take no other action against the seller, or commence any action against the seller, to correct an alleged error in the amount of sales or use tax assessed unless the customer has exhausted his or her remedies through this review process.

Under current law, such disputes are handled through the court system. The procedure under the act is intended to provide a more efficient dispute resolution process.

Rounding

The act modifies the rounding rules used by retailers so that sellers would be allowed to compute the amount of tax to be collected based on each invoice (including numerous items) or on each item included in the sale. Under current law, the amount of tax collected must be calculated by multiplying the tax rate by the total transaction price, not by the prices of individual items. These provisions do not affect the amount of tax due to the state from the retailer, only how the retailer may calculate the amount of tax collected from purchasers.

SSUTA Agents

The act authorizes sellers to appoint an agent to represent the seller before the states that are signatories to the SSUTA. Under these provisions, sellers could designate such agents to: (a) register with DOR for a business tax registration certificate; (b) file an application with DOR for a permit for each place of operations; and (c) remit taxes and file returns under the sales and use tax statutes.

Business Tax Registration

Under current law, any person who is not otherwise required to collect Wisconsin sales and use taxes (because of a lack of nexus) and who makes sales to persons within this state of taxable property or services may register with DOR to voluntarily collect the tax. Sellers who register with DOR must obtain a business tax registration certificate, which authorizes and requires the person to collect, report, and remit the state use tax. The act specifies that registration with DOR under this provision could not be used as a factor in determining whether the seller has nexus with this state for any tax at any time.

In addition, the act specifies that registration under the above provision would authorize and require the retailer to collect, report, and remit local use taxes, and local jurisdictions would be specifically authorized to impose the tax on such sellers. Under current law, voluntary registration only obligates out-of-state retailers to collect state use taxes, not local taxes.

The act also authorizes DOR to waive the business tax registration fee for sellers that voluntarily register to collect sales and use taxes.

Exemption Certificates

Under current law, it is presumed that all receipts are subject to the sales tax until the contrary is established. The burden of proving that a sale is not taxable is upon the person who makes the sale unless that person takes from the purchaser a certificate to the effect that the property or service is purchased for resale or is otherwise exempt.

An exemption certificate relieves the seller from the burden of proof only if either of the following is true:

a. The certificate is taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services and who holds a seller's permit and who, at the time of purchasing the property or services, intends to resell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose.

b. The certificate is taken in good faith from a person claiming exemption.

The exemption certificate must be signed by and bear the name and address of the purchaser, and indicate the general character of the tangible personal property or service sold by the purchaser and the basis for the claimed exemption. The certificate must be in such form as DOR prescribes.

If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of the purchaser's operations, the use is taxable to the purchaser as of the time the property is first used by the purchaser, and the sales price of the property to the purchaser is the measure of the tax. Only when there is an unsatisfied use tax liability on this basis because the seller has provided incorrect information about that transaction to DOR will the seller be liable for sales tax with respect to the sale of the property to the purchaser.

Under the act, an exemption certificate relieves the seller from the burden of proof only if the seller obtains a fully completed exemption certificate, or the information required to prove the exemption, from a purchaser no later than 90 days after the date of the sale, except as provided below. The certificate would not relieve the seller of the burden of proof if the seller fraudulently fails to collect sales tax, solicits the purchaser to claim an unlawful exemption, accepts an exemption certificate from a purchaser who claims to be an entity that is not subject to the sales tax, if the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller in this state and the exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in this state. The certificate would have to provide information that identifies the purchaser and indicate the basis for the claimed exemption, and a paper certificate would have to be signed by the purchaser. The certificate would have to be in such form as DOR prescribes by rule.

If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, the seller could, no later than 120 days after DOR requests that the seller substantiate the exemption, either provide proof of the exemption by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

If a purchaser who purchases taxable items without paying a sales or use tax on such purchase because such items were for resale makes any use of the items other than retention, demonstration or display while holding the items for sale, lease or rental in the regular course of the purchaser's operations, the use would be taxable to the purchaser as of the time that the items are first used by the purchaser, and the purchase price of the items to the purchaser would be the measure of the tax. The current provision making the seller liable for the tax under certain circumstances would be deleted.

Under current law, no certificate is required for certain types of tax-exempt livestock sales. The act repeals this provision so that an exemption certificate would be required for such sales.

Other Provisions

The act eliminates specific requirements relating to the content of sales and use tax returns and, instead, provide that the return must show the amount of taxes due for the period covered by the return and such other information as DOR deems necessary. This modification is intended to provide DOR with flexibility to simplify sales tax returns and make the returns conform to standards required under the SSUTA.

The act imposes certain timing restrictions regarding effective dates related to changes in the sales and use tax rate. Under the act, any change in the sales and use tax rate would be required to take effect on the first day of a calendar quarter. With regards to imposition of the tax on services, an increase in the tax rate would apply to the first billing period beginning on or after the rate increase's effective date; however, a decrease in the tax rate would apply to bills that are rendered on or after the rate decrease's effective date. The Department would be required to notify sellers with respect to the change in the rate of taxes imposed at least 30 days prior to the effective date.

Under current law, in order to protect the revenue of the state, DOR may require sellers to provide security in an amount determined by the Department, but not more than $15,000. The act authorizes DOR to require a larger amount of security from certified service providers.

The act clarifies the imposition of the sales and use tax on licenses. Under current law, a lease is defined to include, among other things, a license. If Wisconsin imposed a tax on the transaction of a taxable lease, it would also impose the tax on a similar license. Under the proposal, licenses would be included as items provided by a seller. The proposal would specifically impose the tax on the licensing of a product by the seller, thereby eliminating potential exemption claims by persons "licensing" an item rather than "selling" an item.

The act restricts the use of personally identifiable information obtained by certified service providers from purchasers, and require CSPs to provide consumers clear and conspicuous notice of their practices regarding such information. CSPs would also have to provide sufficient technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure. CSPs would be permitted to collect personally identifiable information to document the correct assignment of taxing jurisdictions, to investigate fraud, and to ensure its system's reliability.

The act requires the state to provide to consumers public notice of the state's practices related to collecting, using, and retaining personally identifiable information for sales tax purposes. The state would be prohibited from retaining personally identifiable information obtained for purposes of administering the sales tax unless the state is otherwise required to retain the information by law or as provided under the agreement. The state would be required to provide an individual reasonable access to that individual's personally identifiable information and the right to correct any inaccurately recorded information. If any person, other than another state that is a signatory to the SSUTA or a person authorized under state law to access the information, requests access to an individual's personally identifiable information, the state would be required to make a reasonable and timely effort to notify the individual of the request.

Current law specifies that counties and special districts do not have jurisdiction to impose county and special district taxes in regard to tangible personal property purchased in another county or special district that does not impose such taxes and later brought into the a county or special district that does. The act provides that this provision does not apply in the case of snowmobiles, trailers, semitrailers, and all-terrain vehicles.

The act specifies that counties and special districts would have jurisdiction to impose local sales taxes on Wisconsin sellers and retailers who have filed an application to operate as a seller in Wisconsin as well as out-of-state retailers who voluntarily register with DOR to collect use taxes, regardless of whether such retailers are engaged in business in the county or special district. Such retailers would be required to collect, report, and remit sales taxes to DOR for all counties and special districts that have an ordinance or resolution imposing a local sales tax.

The act requires additional notice (120 days) of repeal of a county sales tax or cessation of local baseball park or football stadium taxes.

Fiscal Effect

Under these provisions, Wisconsin would conform to the SSUTA effective October 1, 2009. The Department of Revenue estimates that the modifications in product definitions to comply with the SSUTA would result in a reduction in state sales tax revenues of $4,000,000 in 2009-10 and $5,300,000 in 2010-11. However, the Department also estimates that sales tax revenues would increase by $6,000,000 in 2009-10 and $8,000,000 in 2010-11 as a result of voluntary collections, including those volunteering in order to take advantage of the amnesty provisions. The net effect of these provisions would be an increase in state sales tax revenues of $2,000,000 in 2009-10 and $2,700,000 in 2010-11.

In the aggregate, the Department estimates that county and stadium sales and use tax collections would increase, as a result of these provisions, by $150,000 in 2009-10 and $200,000 in 2010-11, and that exposition district taxes would increase by the same amounts. The sourcing provisions under the act could also result in tax shifting across counties.

In addition, the component of these provisions that would allow a higher rate of retailer's compensation in certain cases would result in a state revenue decrease. At this time, it is not possible to reliably estimate the cost of the higher retailer's compensation, because the number and sales volume of voluntary sellers that would use a system to which such higher compensation would apply is not known. The cost of this provision could be considerable if significant use were made of certified service providers, certified automated systems, and proprietary systems (described previously). To date, only a small number of voluntary sellers under the Agreement have made use of CSPs or such systems.

It is also possible that the act, along with similar laws in other states, could result in a significant increase in sales and use tax collections from remote sales in future years. This could occur if the provisions resulted in additional retailers voluntarily agreeing to collect and remit use taxes to Wisconsin or if Congress were persuaded to pass federal legislation allowing states to require out-of-state sellers to collect and remit the tax.

[Act 2 Sections: 16, 41, 71, 73, 106 thru 108, 154 thru 156, 198 thru 200, 215 thru 218, 221, 225, 227 thru 239, 244 thru 250, 252 thru 299, 301 thru 329, 331, 333 thru 338, 340 thru 540, 542 thru 552, 554, 559, 719, 720, and 9443]

CHILDREN AND FAMILIES

1. FEDERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES CONTINGENCY AND MAINTENANCE OF EFFORT FUNDING

	2008-09
GPR	- $22,529,000
FED	22,529,000

Reduce funding by $22,529,000 GPR and increase funding by $22,529,000 FED in 2008-09 for programs related to the temporary assistance for needy families (TANF) bock grant. Federal funding consists of TANF contingency funds.

The federal TANF contingency fund provides additional funding for TANF-related programs during times of economic downturns if certain conditions are met. In order to receive a payment of contingency funds, a state must: (a) be a needy state; and (b) submit a request for contingency funds during an eligible month. However, in order to receive these funds, the state must meet maintenance of effort and matching requirements.

First, the state must spend maintenance of effort funding equal to 100% of historic state expenditures ($211.3 million in Wisconsin). Wisconsin's current maintenance of effort requirement under TANF is 80% of historic state expenditures ($169.0 million). As a result, the state would be required to spend an additional $42.3 million to meet the 100% requirement. Second, the state must provide matching funds at the state's federal medical assistance percentage (currently 41% in Wisconsin) applicable for the fiscal year in which funds are awarded. If the state fails to meet the maintenance of effort and/or matching requirements, then the state must pay back all, or a portion, of the contingency funds. If a state fails to pay back the contingency funds, the state's TANF block grant for the following fiscal year is reduced by the amount of contingency funds that was required to be paid back.

The Department of Children and Families (DCF) recently submitted a request for contingency funds, and the state was determined to be needy based on growth in the

FoodShare caseload. The state is eligible for $62.9 million in additional TANF contingency funds in federal fiscal year (FFY) 2008-09. The portion of this award available in state fiscal year (SFY) 2008-09 is $47.2 million.

In FFY 2007-08, $213.5 million in state and local funding was spent on expenditures that would qualify as maintenance of effort. Assuming a similar amount for FFY 2008-09, it would appear that the maintenance of effort of 100% of historic state expenditures requirement would be met. However, this amount includes the $22.5 million GPR that the act eliminates. The Department of Administration (DOA) indicates that as a result, an additional $22.5 million GPR would be provided in 2009-10 under the Governor's 2009-11 biennial budget bill. These funds would have to be spent by September 30, 2009, in order to count towards the maintenance of effort and/or matching requirements for the receipt of the $47.2 million in federal TANF contingency funds in FFY 2008-09.

In addition to the $22.5 million, the state must spend $32.3 million in matching funds before September 30, 2009. Excess maintenance of effort funding of $2.2 million would count towards this match requirement. For the remaining match requirement of $30.1 million, it is unknown whether the state already spends funds in other state programs that would qualify as matching funds or whether additional state funding would be provided during the first three months of SFY 2009-10 to meet the match requirements for the TANF contingency funds. If the state fails to meet the match requirements, a portion of the TANF contingency funds would have to be paid back. If the funds were not repaid, then the TANF block grant for the following federal fiscal year could be reduced.

As noted, the act provides $47.2 million in federal TANF contingency funds. Of these funds, $22.5 million would replace GPR funding that is currently used as maintenance of effort for the TANF block grant. An additional $22.2 million would provide increases to several programs described in the entries below. The projected 2008-09 ending TANF balance would total $2.4 million.

[Act 2 Sections: 9208(1)&(2)]

2. CHILD CARE SUBSIDIES

	2008-09
FED	$20,384,400

Provide $20,384,400 FED in 2008-09 for direct child care subsidies under the Wisconsin Shares program, including funding for child care subsidies, local administration, on-site child care at job centers and counties, and migrant child care. The additional funds would address an anticipated shortfall in the Wisconsin Shares program. Funding for the Wisconsin Shares program in 2008-09 would total $375,736,400.

[Act 2 Sections: 44 and 9208(2)]

3. EMERGENCY ASSISTANCE

	2008-09
FED	$1,000,000

Provide $1,000,000 FED in 2008-09 to increase funding for the emergency assistance program to reflect increased demand for the program, which provides assistance to needy persons in cases of fire, flood, natural disaster, energy crisis, homelessness, or impending homelessness. Funding for the program would total $7,000,000 in 2008-09.

[Act 2 Sections: 43 and 9208(2)]

4. CHILD CARE PROGRAM INTEGRITY

	2008-09	
	Funding	Positions
FED	$837,500	5.00

Provide $837,500 FED in 2008-09, and 5.0 FED positions, beginning in 2008-09, to expand and enhance state oversight of the Wisconsin Shares child care subsidy program.

Licensed Child Care Attendance Monitor System. Provide $500,000 in 2008-09 to implement a system to monitor child care attendance in licensed child care centers. The design of this system has not been fully developed, but may include a "swipe card" system that would allow for the electronic recording and monitoring of attendance at licensed child care facilities. DOA indicates that implementation of this system would address concerns regarding reimbursement of child care providers for children who are not receiving child care or who have parents that may not be legitimately employed.

Under Wisconsin Shares, an eligible parent may choose a child care provider from: (a) a licensed day care center; (b) a certified day care provider (either Level I or Level II); or (c) a day care program provided or contracted for by a school board. A day care center that provides care for four or more children under the age of seven must be licensed by DCF. Day care providers that are not required to be licensed by the state or established by a school board, but are reimbursed under Wisconsin Shares, must be certified by the county department of social or human services or similar tribal body.

Although the act contains no statutory language regarding this system, information provided by DOA indicates that the system would only apply to licensed child care providers.

Program Integrity Unit. Provide $337,500 in 2008-09 and 5.0 positions, beginning in 2008-09, to expand and enhance state oversight of Wisconsin Shares in the Department's program integrity unit. The program integrity unit is responsible for: (a) ensuring that parents and providers receiving state child care subsidies comply with state and federal statutes and rules; (b) monitoring billing and attendance activity; and (c) implementing overpayment prevention strategies.

The additional 5.0 positions would be responsible for monitoring county program integrity efforts and performing investigations, audits, and site visits around the state. These positions would include: (a) a balance of state coordinator; (b) a central office coordinator/data specialist; (c) two field positions, with at least one located in Milwaukee County; and (d) a fraud specialist or investigator. DCF currently has the equivalent of 2.0 positions for Wisconsin Works (W-2) and child care contract and financial monitoring.

[Act 2 Sections: 45 and 9208(2)]

FINANCIAL INSTITUTIONS

1. REGULATION OF MORTGAGE BANKERS, BROKERS, AND LOAN ORIGINATORS

	2008-09	2009-11
PR-REV	$0	$750,000
GPR-Earned	0	750,000

Modify state law regarding the regulation of mortgage bankers, mortgage brokers, and loan originators by the Division of Banking (DOB) within the Department of Financial Institutions (DFI).

Current law requires mortgage bankers, brokers, and loan originators to register with DOB. The act converts the current registration requirements for mortgage bankers and brokers into a licensure requirement. In addition, the act creates a new licensure procedure for mortgage loan originators.

When necessary to provide a framework for the provisions of the act, this summary describes current law provisions, which are specifically identified as current law provisions. The remaining text of the summary describes the language of the act.

Definitions

The act revises the definitions of who qualifies as a *"mortgage banker,"* a *"mortgage broker,"* or a *"mortgage loan originator"* and is therefore subject to regulation. In addition, the act creates, amends, and deletes a series of additional terms that have specific meanings for purposes of regulating these professions.

"Mortgage banker" would mean a person who does any of the following:

a. Originates residential mortgage loans for itself, as payee on the note evidencing the residential mortgage loan, or for another person.

b. Sells residential mortgage loans or interests in residential mortgage loans to another person.

c. Services residential mortgage loans or provides escrow services.

A *"mortgage banker"* would not include any of the following:

a. A depository institution (as defined below).

b. A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency.

c. An institution regulated by the farm credit administration.

d. A person that only performs real estate brokerage activities and is licensed by the state, unless the person is compensated by a lender, mortgage broker, or mortgage loan originator or by any agent of a lender, mortgage broker, or mortgage loan originator.

e. A person solely involved in extensions of credit relating to time-share plans.

f. The Department of Veterans Affairs (DVA) when administering the veterans housing loan program.

[This revised definition of a "mortgage banker" under the act reflects several changes to current law. First, the term "loan" would be superseded with the term "residential mortgage loan" (see definition of "residential mortgage loan" below). Second, the current definition includes persons who service land contracts. This reference is deleted under the act. Finally, the current law descriptions of who does not qualify as a "mortgage banker" would be replaced with those above. Under current law, a "mortgage banker" does not include any of the following: (a) a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers as provided by law; (b) a community-based organization or a housing authority; (c) a credit union which negotiates loans or any licensed lender under Chapter 138 of the Statutes (relating to money and rates of interest) which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan; (d) employees of persons described in (a) through (c) if the employee is performing his or her duties as an employee; (e) a landlord who, in connection with leasing real property, makes a loan to a tenant that is secured by leasehold improvements that are fixtures or improvements to real property; (f) an employee or agent of such a landlord if the employee or agent is performing his or her duties in making leasehold improvement loans in connection with leasing real property; (g) a person who originates, sells, or services loans only with the person's own funds for the person's own investment and the person has originated, sold, or serviced no more than four loans during the previous 12 months; or (h) the Department of Veterans Affairs when administering the veterans housing loan program.]

"Mortgage broker" would mean a person who, on behalf of a residential mortgage loan applicant or an investor and for commission, money, or other thing of value, finds a residential mortgage loan or negotiates a residential mortgage loan or commitment for a residential mortgage loan or engages in table funding.

A *"mortgage broker"* would not include any of the following:

a. A depository institution.

b. A subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency.

c. An institution regulated by the farm credit administration.

d. A person that performs real estate brokerage activities only and is licensed by the state, unless the person is compensated by a lender, mortgage broker, or mortgage loan originator or by any agent of a lender, mortgage broker, or mortgage loan originator.

e. A person solely involved in extensions of credit relating to time-share plans.

f. DVA when administering the veterans housing loan program.

[The revised definition of "mortgage broker" under the act modifies the current definition in three areas. First, the term "loan" would be replaced with the term "residential mortgage loan" (see definition of "residential mortgage loan" below). Second, the current definition includes persons who negotiate land contracts. This reference is deleted under the act. Finally, the current law descriptions of who does not qualify as a "mortgage broker" would be replaced with those above. Under current law, a "mortgage broker" does not include any of the following: (a) a bank, trust company, savings bank, savings and loan association, insurance company, or a land mortgage or farm loan association organized under the laws of this state or of the United States, when engaged in the transaction of business within the scope of its corporate powers; (b) a community-based organization or a housing authority; (c) a credit union which negotiates loans or any licensed lender under Chapter 138 of the Statutes which negotiates loans or any licensed attorney who, incidental to the general practice of law, negotiates or offers or attempts to negotiate a loan; or (d) employees of persons described in (a) through (c) if the employee is performing his or her duties as an employee.]

"Mortgage loan originator" would mean an individual who, for compensation or gain or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.

A *"mortgage loan originator"* would not include any of the following:

a. An individual engaged solely as a loan processor or underwriter, unless the individual represents to the public, through advertising or another means of communication such as the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

b. An individual who performs real estate brokerage activities only and is licensed by the state, unless the individual is compensated by a lender, mortgage broker, or another mortgage loan originator or by any agent of a lender, mortgage broker, or another mortgage loan originator.

c. An individual solely involved in extensions of credit relating to time-share plans.

d. An employee of DVA when engaged in duties related to administering the veterans housing loan program.

[This definition would amend and supersede the current law definition of "loan originator." Under current law, a "loan originator" means a person who, on behalf of a mortgage banker or mortgage broker, finds a loan or negotiates a land contract, loan or commitment for a loan.]

New Definitions. In amending the regulation of mortgage bankers, brokers, and loan originators, the following new definitions are created by the act:

"Another state" would mean any state of the United States other than Wisconsin; the District of Columbia; any territory of the United States; Puerto Rico; Guam; American Samoa; the Trust Territory of the Pacific Islands; the Virgin Islands; or the Northern Mariana Islands.

"Branch office" would mean an office or place of business, other than the principal office, located in this state or another state, where a mortgage banker or mortgage broker conducts business with residents of this state.

"Depository institution" would have the meaning given in the United States Code [12 USC 1813 (c) (1)], but would also include any state or federal credit union. The federal definition includes any bank or savings association.

"Dwelling" would have the meaning given in the United States Code [15 USC 1602 (v)]. The federal definition means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums and cooperatives.

"Federal banking agency" would mean the Board of Governors of the Federal Reserve System, the U.S. Office of the Comptroller of the Currency, the U.S. Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

"Finds," with respect to a residential mortgage loan, would mean to assist a residential mortgage loan applicant in locating a lender for the purpose of obtaining a residential mortgage loan and to make arrangements for a residential mortgage loan applicant to obtain a residential mortgage loan, including collecting information on behalf of an applicant and preparing a loan package.

"Loan processor or underwriter" would mean an individual who, as an employee, performs clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator (that is either licensed or exempt from licensing), which clerical or support duties may include any of the following occurring subsequent to the receipt of a residential mortgage loan application: (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or (b) communicating with a residential mortgage loan applicant to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or providing counseling related to loan rates or terms.

"Nationwide Mortgage Licensing System and Registry" (NMLSR) would mean the licensing and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for mortgage loan originators (who are either licensed or exempt from licensing) or, if this system is no longer maintained, any system established by the Secretary of the federal Department of Housing and Urban Development.

"Negotiate," with respect to a residential mortgage loan, would mean to discuss, explain, or present the terms and conditions, including rates, fees, and other costs, of a residential mortgage loan with or to a residential mortgage loan applicant, but would not include making an underwriting decision on a residential mortgage loan or closing a residential mortgage loan.

"Nontraditional mortgage product" would mean any mortgage product other than a 30-year fixed rate mortgage.

"Originate," with respect to a residential mortgage loan, would mean to make an underwriting decision on the residential mortgage loan and close the loan.

"Principal office," with respect to a mortgage banker or mortgage broker, would mean the place of business designated by the mortgage banker or mortgage broker as its principal place of business, as identified in the records of DOB.

"Real estate brokerage activity" would mean any activity that involves offering or providing to the public real estate brokerage services involving residential real property in this state, including all of the following: (a) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing for the transaction; (d) engaging in any activity for which a person engaged in the activity is required to be licensed by the state under the statutes relating to real estate practice; and (e) offering to engage in any activity, or act in any capacity, described in (a) through (d) above.

"Residential real property" would mean real property on which a dwelling is constructed or intended to be constructed.

"Services," with respect to a residential mortgage loan, would mean to receive payments on a note from the borrower and distribute these payments in accordance with the terms of the note or servicing agreement.

"Unique identifier" would mean a number or other identifier assigned by protocols established by the NMLSR.

Amended Definitions. In revising the regulation of mortgage bankers, brokers, and loan originators, the following definitions are amended by the act:

"Residential mortgage loan" would mean any loan primarily for personal, family, or household use that is secured by a lien or mortgage, or equivalent security interest, on a dwelling or residential real property located in this state. [This definition would replace the current law definition of "loan" in the mortgage banking statutes. Under current law, a "loan" means a loan for personal, family, or *household purposes* that is secured by a lien or mortgage, or equivalent security interest, on real property located in this state. A loan secured by real property consisting of one to four dwelling units, including individual condominium units, is considered a loan for *household purposes*, but certain loans made by a landlord to a tenant are not considered loans for *household purposes*.]

"Table funding" would mean a transaction in which a person conducts a residential mortgage loan closing in the person's name with funds provided by a third party and the person assigns the residential mortgage loan to the third party within 24 hours of the residential mortgage loan closing. [This revised definition reflects that under the act the current law "loan" term has been superseded with the term "residential mortgage loan."]

"Net worth" would mean total tangible assets less total liabilities of a person, or, if the person is an individual, total tangible assets less total liabilities exclusive of the person's principal residence and its furnishings and personal use vehicles. [This revised definition replaces the current law phrase "natural person" with "an individual."]

Deleted Definitions. In revising the regulation of mortgage bankers, brokers, and loan originators, the act deletes the following current law definitions: (a) affiliate; (b) bona fide office; (c) consumer; (d) loan solicitor; and (e) warehouse line of credit.

[Under current law a "loan solicitor" is a type of "loan originator" with a more limited scope of duties and activities, and a more limited examination and continuing education requirement. A "loan solicitor" is limited to performing the following activities: (a) taking information from a borrower and filling out a loan application; (b) estimating the maximum mortgage loan amount the prospective borrower can afford; (c) informing the prospective borrower about the different types of loan products available from a single lender; (d) collecting financial information and related documents that are part of the application process; (e) assisting the borrower in understanding credit problems; (f) initiating the ordering of verifications of employment; (g) initiating the ordering of verifications of deposits; (h) initiating the ordering of requests for mortgage and other loan verifications; and (i) providing the: (1) agreement and disclosures associated with consumer mortgage brokerage agreements; (2) servicing disclosure statements; (3) affiliated business arrangement disclosures; (4) good faith estimate; and (5) the federal Department of Housing and Urban Development's Settlement

Costs and Information Booklet. Under the act, the current definition of loan solicitor is eliminated and such individuals would instead have to qualify as, and carry out their professional responsibilities as, "mortgage loan originators."]

Conversion of Current Law Registration Requirement for Mortgage Bankers and Brokers into a Licensure Requirement

The act replaces the current law requirement that a mortgage banker or mortgage broker may not conduct business without a certificate of registration from DOB with a licensure requirement.

Application Forms and Division Discretion. The act requires persons wishing to be licensed mortgage bankers or brokers to apply to DOB, on forms and in the manner prescribed by the Division, and to pay the fee specified by rule. The application forms could contain any content or requirement that DOB, in its discretion, determines necessary and these application forms could be modified or updated as necessary by the Division to carry out the regulation of these professions.

Deletion of Certain Current Law Application Requirements. The act deletes the current law requirements for applicants submitting applications to be registered that they: (a) verify the application; and (b) [for partnerships, limited liability companies (LLCs), or corporations] that the application identify each partner, member, or officer who will use the title mortgage banker or mortgage broker.

Licensed Offices. The act requires each mortgage banker or broker to obtain and maintain a license for its principal office and a separate license for each branch office.

Additional Guarantee Requirement for Mortgage Banker or Mortgage Broker Applicants. Under current law, in addition to the application requirement, to be registered as either a mortgage banker or mortgage broker, an applicant must satisfy one additional requirement. For a mortgage banker or mortgage broker with a bona fide office in this state, this additional requirement may be met by: (a) filing a commercial surety bond ($25,000 for a mortgage banker and $10,000 for a mortgage broker); (b) filing a personal bond or third party guarantee ($25,000 for a mortgage banker and $10,000 for a mortgage broker); or (c) meeting a minimum net worth requirement. [A mortgage banker must have minimum net worth of $25,000 and a warehouse line of credit of not less than $250,000, or a minimum net worth of $100,000. A mortgage broker must have a minimum net worth of $100,000.] A mortgage banker applicant with a bona fide office may also meet this requirement by submitting evidence that the applicant has been approved as a mortgagee by certain federal agencies.

Under current law, for a mortgage banker or mortgage broker without a bona fide office, this additional requirement may be met by: (a) filing a commercial surety bond ($300,000 for a mortgage banker and $120,000 for a mortgage broker); or (b) meeting a minimum net worth requirement ($250,000 for either a mortgage banker or mortgage broker).

The act eliminates the bona fide office distinction for both mortgage bankers and mortgage brokers. In addition to the application requirement, under the act, mortgage bankers could meet the additional guarantee requirement by both: (a) filing a commercial surety bond in the amount of $300,000; and (b) establishing a minimum net worth of $250,000. The bond and minimum net worth amounts are identical to the current law amounts for a mortgage banker without a bona fide office, but under the act both requirements would have to be satisfied.

Mortgage brokers could meet the additional guarantee requirement by both: (a) filing a commercial surety bond in the amount of $120,000; and (b) establishing a minimum net worth of $100,000. The bond amount is identical to the current law amount for a mortgage broker without a bona fide office, but the net worth requirement would be reduced from $250,000 to $100,000. However, unlike current law, under the act both requirements would have to be satisfied.

The act eliminates the current law ability of mortgage bankers and mortgage brokers with bona fide offices to satisfy the guarantee requirement by filing a personal bond or third party guarantee. The act also eliminates the current law provision which permits mortgage bankers with a bona fide office to satisfy the guarantee requirement through approval as a mortgagee by certain federal agencies.

Investigation of Applicants. Under the act, upon the filing of the application and the payment of the required fee, DOB would be required to make an investigation of the applicant including, if the applicant is a partnership, LLC, association, or corporation, the members or officers and directors, respectively, of the applicant. The Division would be required to issue a license if it finds that the character, general fitness, and financial responsibility of the applicant, including its members or officers and directors if the applicant is a partnership, LLC, association, or corporation, warrant the belief that the business will be operated in compliance with state law. A mortgage banker or mortgage broker license would not be assignable or transferable.

License Renewals. DOB could not renew a license unless it finds that the mortgage banker or mortgage broker continues to meet the minimum standards for license issuance. The license of a mortgage banker or mortgage broker who fails to satisfy the minimum standards for license renewal would expire. The Division could, by rule, provide for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

Requirement that a Mortgage Banker or Mortgage Broker be Responsible for and Supervise the Work of a Mortgage Loan Originator

Current law requires that a mortgage banker or mortgage broker be responsible for and supervise the acts of a loan originator. The act further provides that a mortgage loan originator could act on behalf of only the mortgage banker or mortgage broker with which that mortgage loan originator's license is associated in the records of the Division. A mortgage loan originator's license could only be associated with one mortgage banker or mortgage broker at a time.

Current law permits a loan originator to transfer employment to a new mortgage banker or mortgage broker. A transfer application with its associated fee must be filed with DOB to transfer employment. The act further provides that a mortgage loan originator could not act on behalf of a mortgage banker or mortgage broker until that mortgage loan originator's license association (no longer employment) has been transferred to that mortgage banker or mortgage broker in the records of the Division.

Current law requires that every loan application be signed by a loan originator. The act provides that a residential mortgage loan application could also be signed by any individual who meets the definition of mortgage loan originator and who is all of the following: (a) an employee of, and acting for, a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (b) registered with, and who maintains a unique identifier through, the NMLSR.

In addition, the act requires that any person originating a residential mortgage loan must clearly place the person's unique identifier on all residential mortgage loan application forms, solicitations, and advertisements, including business cards or Web sites, and on all other documents specified by rule of the Division.

Record-Keeping Requirements for Mortgage Bankers and Mortgage Brokers

In addition to other information required to be maintained for each mortgage loan application under current law, the act requires mortgage bankers and mortgage brokers to keep information regarding: (a) the name of the mortgage loan originator; and (b) the loan amount.

In addition to correspondence relating to the loan required to be maintained by a mortgage banker for each serviced mortgage loan, the act requires all of the following to be kept by a mortgage banker: (a) all payments received from the borrower; (b) all charges assessed to the borrower's account; (c) all payments made by the mortgage banker on behalf of the borrower; and (d) the unpaid balance on the borrower's account.

Under current law, a mortgage banker or mortgage broker must keep for at least 25 months copies of all deposit receipts, canceled checks, trust account records, loan application documents, loan servicing records and documents, and other relevant documents or correspondence received or prepared by the mortgage banker or mortgage broker in connection with a loan or loan application. The act modifies current law to increase the retention period to 36 months and to provide that all books and records that, in the opinion of the Division, will enable the Division to determine whether the mortgage banker or mortgage broker is in compliance with state regulations be kept in an office of the licensed mortgage banker or mortgage broker.

Under current law, for all records required to be retained, the mortgage banker or mortgage broker must make the records available for inspection and copying by DOB. If the records are not kept within Wisconsin, the mortgage banker or mortgage broker must, upon request of the Division, promptly send exact and complete copies of requested records to the

Division. Under the act, upon request by the Division, any licensee and any other person whom the Division has authority to investigate and examine, would have to make any books and records requested by the Division available for inspection and copying by the Division. If any records are kept at a licensed office not located within this state, the mortgage banker or mortgage broker would be required to, upon request of the Division, promptly deliver such documents to any location within this state specified by the Division.

Mortgage Brokerage Agreements and Disclosures

Under current law, every contract between a mortgage broker and a consumer, under which the mortgage broker agrees to provide brokerage services to the consumer, must be in writing. Under the act, this requirement would apply to contracts for brokerage services relating to a residential mortgage loan between a mortgage broker and an individual (rather than a "consumer"). [Under current law, "consumer" means a person, other than an organization, who seeks or acquires mortgage brokerage services for personal, family, or household purposes.]

New Licensure Procedure for Mortgage Loan Originators

License Requirement. The act provides that an individual may generally not engage in the business of a mortgage loan originator with respect to a residential mortgage loan, or use the title "mortgage loan originator," advertise, or otherwise portray himself or herself as a mortgage loan originator in this state, unless the individual has been issued a license by DOB, and thereafter maintains, a license. Each licensed mortgage loan originator would be required to register with, and maintain a valid unique identifier issued by, the NMLSR.

License Applications. Applicants for a mortgage loan originator license would have to apply to DOB, on forms and in the manner prescribed by the Division, and pay the fee specified in rules promulgated by DFI. The Division would have to require mortgage loan originators to be licensed and registered through the NMLSR. Forms prescribed by the Division could contain any content or requirement that the Division, in its discretion, determines necessary. These forms could be modified or updated as necessary by the Division to carry out the regulation of the profession.

An application would have to include the individual's social security number. DOB could not disclose the individual's social security number to any person except to the Department of Revenue for the purpose of collecting unpaid taxes and to the Department of Children and Families (DCF) for the purpose of child support enforcement. If an individual does not have a social security number, the individual, as a condition of applying for, or applying to renew, a mortgage loan originator license, could submit a statement made or subscribed under oath or affirmation to the Division that the individual does not have a social security number. Any license issued or renewed in reliance upon a false statement submitted by an applicant would be invalid.

Any applicant for a license would have to furnish to the NMLSR information concerning the applicant's identity, including fingerprints for submission to the FBI and to any governmental agency or entity authorized to receive this information, for purposes of a state, national, and international criminal history background check. The required identifying information would also include personal history and experience in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and DOB to obtain the following: (a) an independent credit report from a consumer reporting agency; and (b) any information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

Any applicant for a mortgage loan originator license would also have to include in the application the name of the mortgage banker or mortgage broker who will employ the mortgage loan originator.

License Issuance. Upon the filing of an application for a mortgage loan originator license and the payment of the fee set by rule, DOB could issue to the applicant a mortgage loan originator license if the Division finds that all of the following apply:

a. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, unless the revocation was subsequently and formally vacated.

b. The applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application or, for a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, at any time preceding the date of the application. This prohibition would not apply with respect to any conviction for which the applicant received a pardon.

c. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently. An individual has shown that he or she is not financially responsible if he or she has shown a disregard in the management of his or her own financial condition, including having current outstanding judgments other than those resulting from medical expenses, having current outstanding tax liens or other government liens and filings, or having, within the past three years, foreclosures or any pattern of seriously delinquent accounts.

d. The applicant has satisfied the education requirements for a mortgage loan originator.

e. The applicant has passed a written test that meets the statutory requirements identified below.

f. The applicant has met the surety bond requirement.

Surety Bond. Each mortgage loan originator would have to be covered by a surety bond. The penal sum of the surety bond would have to provide coverage for each mortgage loan originator in an amount that reflects the dollar amount of residential mortgage loans originated by the mortgage loan originator, as determined by DOB. The surety bond would have to be in a form prescribed, and satisfy all requirements established, by rule of the Division.

A surety bond meeting the requirements for a mortgage banker or mortgage broker would also satisfy the surety bond requirement for a mortgage loan originator who identifies himself or herself as employed by the mortgage banker or mortgage broker (provided the penal sum of the surety bond meets the requirements of the prior paragraph).

When an action is commenced on a mortgage loan originator's surety bond, the Division could require the filing of a new surety bond. If an action results in recovery on a mortgage loan originator's surety bond, the mortgage loan originator would be required to immediately file a new surety bond.

License Renewal. A mortgage loan originator could apply to renew a license by timely submitting, on forms and in the manner prescribed by DOB, a completed renewal application and all required renewal fees. The Division could not renew a license unless the mortgage loan originator continues to meet the minimum standards for license issuance and has satisfied the annual continuing education requirements.

The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal would expire. DOB could, by rule, provide for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

Application Denial. The Division could not issue or renew a license if any of the following applies:

a. The applicant has failed to provide his or her social security number, unless he or she does not have one.

b. The Department of Revenue has certified that the applicant is liable for delinquent taxes. An applicant whose application for issuance or renewal of a license is denied for delinquent taxes would be entitled to a notice and a hearing under the tax statutes but not to any other notice or hearing.

c. The applicant has failed to comply, after appropriate notice, with a subpoena or warrant related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support. An applicant whose license is not issued or renewed for delinquent payments would be entitled to a notice and hearing under the child support statutes but not to any other notice or hearing.

Licensing Period and Fees. DOB would be required to promulgate rules establishing the license period and the license fees for mortgage loan originators. The fees could not be less than $250 annually. The current registration fee is $250 every two years.

Persons Not Subject to Licensure. The following persons would not be considered to be acting as mortgage loan originators and would not be subject to regulation as a mortgage loan originator:

a. Any individual who meets the definition of mortgage loan originator and who is all of the following: (1) an employee of, and acting for, a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) registered with, and who maintains a unique identifier through, the NMLSR.

b. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of the individual's spouse, child, sibling, parent, grandparent, or grandchild, including any stepparent, stepchild, stepsibling, or adoptive relationship.

c. Any person who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

d. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or mortgage loan originator or by any agent of a lender, mortgage broker, or mortgage loan originator.

Education and Testing Requirements for Mortgage Loan Originators

Pre-License Education Requirements. An applicant for a mortgage loan originator license, prior to the Division's issuance of the license, would have to complete at least 20 hours of education, including a minimum of all of the following: (a) three hours of federal law and regulations; (b) three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues; and (c) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Continuing Education Requirements. An applicant for renewal of a mortgage loan originator license, prior to the Division's renewal of the license, would have to annually complete at least eight hours of education, including a minimum of all of the following: (a) three hours of federal law and regulations; (b) two hours of ethics, including instruction on fraud, consumer protection, and fair lending issues; and (c) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

Education Approval. No education course could count toward the pre-license or continuing education requirements unless the course has been reviewed and approved by the NMLSR based upon reasonable standards, including review and approval of the course provider.

An education course meeting this standard could count toward the pre-license or continuing education requirements even if the course is any of the following: (a) provided by the applicant's or licensee's employer, by an entity affiliated with the applicant or licensee by an agency contract, or by any subsidiary or affiliate of such an employer or affiliated entity; (b) offered through the Internet or another online or electronic medium; or (c) taken in another state.

Subject to any promulgated rule regarding the reinstatement of expired licenses, if an individual was previously registered as a loan originator, or previously licensed as a mortgage loan originator, the Division could not issue or renew a mortgage loan originator license for the individual unless the individual satisfies the pre-license or continuing education requirements or demonstrates to the Division's satisfaction that the individual has completed all education requirements applicable to the individual in the last year in which the individual's license or registration was valid.

Except as provided in any promulgated rule regarding the reinstatement of expired licenses, a licensed mortgage loan originator could receive credit for a continuing education course only in the year in which the course is taken and could not take the same approved course in the same or successive years to meet the continuing education requirements.

A licensed mortgage loan originator who is an approved instructor of an approved continuing education course could receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

DOB could, by rule, allow a renewal license applicant to make up any deficiency in meeting the continuing education requirements.

Testing Requirements. An applicant for a mortgage loan originator license, prior to the Division's issuance of the license, would have to pass a written test meeting the standards outlined below. An individual would have to answer at least 75% of the test questions correctly to achieve a passing test score.

The test would have to be developed by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards. The test would have to adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including all of the following: (a) ethics; (b) federal and state law, regulations, and rules pertaining to mortgage origination; and (c) federal and state law, regulations, and rules relating to residential mortgage transactions, including instruction on fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

A written test would satisfy the above requirements even if it is provided at the location of the applicant's employer, any subsidiary or affiliate of the applicant's employer, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

An individual could retake a test three consecutive times, with each test retaken no less than 30 days after the preceding test. If the individual fails three consecutive tests, the individual could not retake a test again for at least six months.

If an individual previously licensed as a mortgage loan originator fails to maintain a valid license for a period of five years or longer, the individual would have to retake the pre-license test. For purposes of determining the five-year period, DOB could not consider any period during which the individual was exempt from licensing due to his or her employment with a depository institution.

Compliance Records. The act requires mortgage loan originators to keep records documenting compliance with these education and testing requirements for at least four years.

Current Law. Currently, an applicant for renewal of a certificate of registration as a loan originator must, generally, as part of the application submit evidence that is satisfactory to the Division that, during the two years preceding the date of application, the applicant has successfully completed at least 16 hours of education approved by the Loan Originator Council covering primary and subordinate mortgage financing transactions and state regulation of the profession.

No later than June 30 of each year, the Technical College System Board, a professional trade association whose members include loan originators, or any other person approved by the Division must administer an examination or series of examinations, approved by the Loan Originator Council, on the education subjects outlined above. Any applicant who, as part of the application, submits evidence that is satisfactory to the Division that the applicant has passed the required examination or series of examinations during the two years immediately preceding the date of application is not required to comply with the education requirement of the preceding paragraph.

A loan originator must keep records documenting compliance with education and examination requirements for at least four years. The Technical College System Board and any professional trade association or other person that administers examinations or provides continuing education to loan originators must maintain records documenting attendance and examination performance for at least four years.

Except for the requirement that the loan originator retain documentation for four years, these current law requirements would be replaced by the new provisions outlined above.

Nationwide Mortgage Licensing System and Registry and Cooperative Arrangements.

Participation. The act requires DOB to participate in the Nationwide Mortgage Licensing System and Registry. The Division would be authorized to establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and process transaction fees or other fees related to mortgage banker, mortgage broker, and mortgage loan originator licensees. With respect to any form, fee, or other information related to the initial issuance or renewal of a mortgage loan originator license, the Division could require that any applicant submit such form, fee, or other information directly to the NMLSR and could authorize the NMLSR to perform any function related to the licensing of mortgage loan originators in this state.

DOB could provide to the NMLSR any information relating to an applicant for initial issuance or renewal of a mortgage loan originator license that the Division and the NMLSR determine to be relevant to the application or to any mortgage loan originator responsibility administered or conducted through the NMLSR.

The Division could rely on the NMLSR to establish any dates relating to application or reporting deadlines for mortgage loan originators, to establish requirements for amending or surrendering mortgage loan originator licenses, or to establish any other requirements applicable to licensed mortgage loan originators to the extent the requirements are a condition of the state's participation in the NMLSR.

Channeling Information. To reduce the points of contact that the Division may have to maintain, and to facilitate compliance with the requirement that a mortgage loan originator applicant must provide certain information regarding his or her identity to NMLSR, the Division could use the NMLSR as a channeling agent for requesting and distributing information to and from any source so directed by the Division, including the FBI, any state or federal department of justice, or any other governmental agency.

Challenge Process. DOB would be required to establish a process whereby mortgage loan originators could challenge information maintained by the NMLSR on behalf of the Division.

Confidential Information. If any information or material is considered confidential or privileged under federal or state law before it is provided or disclosed to the NMLSR, it would continue to be confidential or privileged after it is provided or disclosed to, and while maintained by, the NMLSR, except to the extent federal or state law expressly provides otherwise and except as provided below. Confidential or privileged information or material provided or disclosed to NMLSR would not be subject to any of the following: (a) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of federal or state government; and (b) subpoena or discovery, or admission into evidence, in any private civil action or administrative proceeding, unless the person to whom the information or material pertains waives any right or protection of confidentiality or privilege in the information or material.

Confidential or privileged information or material provided or disclosed to NMLSR could be shared with any state or federal regulatory agency having supervisory authority over mortgage lending without losing any right or protection of confidentiality or privilege under federal or state law.

These confidentiality provisions would not prohibit the NMLSR from providing public access to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators.

Cooperative Arrangements. DOB could enter into cooperative, coordinating, or information-sharing arrangements or agreements with other governmental agencies or with associations representing other governmental agencies, including the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

Prohibited Acts and Practices, and Discipline of Mortgage Bankers, Mortgage Brokers, and Mortgage Loan Originators

Prohibited Acts and Practices. The following table identifies the prohibited acts and practices for mortgage bankers, mortgage brokers, and loan originators under current law, and how the act amends and expands the list of prohibited acts and practices.

Current Law	Act 2
The Division may deny a submitted application, or may revoke, suspend, or limit the certificate of registration of a mortgage banker, loan originator, or mortgage broker, or may reprimand a mortgage banker, loan originator, or mortgage broker, if it finds that the mortgage banker, loan originator, or mortgage broker did any of the following:	No mortgage banker, mortgage loan originator, or mortgage broker, and no member, officer, director, principal, partner, trustee, or other agent of a mortgage banker or mortgage broker, could do any of the following:
(a) Made a material misstatement in an application for registration, or in information furnished to the Division.	(a) Make a material misstatement, or knowingly omit a material fact, in a license application, or in other information or reports furnished to the Division, to the NMLSR, or to any other governmental agency, including failing to disclose a criminal conviction or any disciplinary action taken by a state or federal regulatory agency.
(b) Made a substantial misrepresentation in the course of practice injurious to one or more of the parties to a transaction.	(b) Make, in any manner, any materially false or deceptive statement or representation, including engaging in bait and switch advertising or falsely representing residential mortgage loan rates, points, or other financing terms or conditions.
(c) Made a false promise that influences, persuades, or induces a client to act to his or her injury or damage.	(c) Make a false, deceptive, or misleading promise relating to the services being offered or that influences, persuades, or induces a client to act to his or her detriment.
(d) Pursued a continued and flagrant course of misrepresentation, or made false promises, whether directly or through agents or advertising.	(d) Pursue a continued and flagrant course of misrepresentation, or make false promises, whether directly or through agents or advertising.
(e) Acted for more than one party in a transaction without the knowledge and consent of all parties on whose behalf the mortgage banker, loan originator or mortgage broker is acting.	(e) Act for more than one party in a transaction without the knowledge and consent of all parties on whose behalf the mortgage banker, mortgage loan originator, or mortgage broker is acting.

Current Law	Act 2
(f) Accepted a commission, money, or other thing of value for performing an act as a loan originator unless the payment is from a mortgage banker or mortgage broker who is registered as employing the loan originator.	(f) Accept a commission, money, or other thing of value for performing an act as a mortgage loan originator unless the payment is from a mortgage banker or mortgage broker with whom the mortgage loan originator's license is associated, as identified in the records of the Division at the time the act is performed.
No provision.	(fg) As a mortgage banker or mortgage broker, pay a commission, money, or other thing of value to any person for performing an act as a mortgage loan originator unless the mortgage loan originator's license is associated with the mortgage banker or mortgage broker in the records of the Division at the time the act is performed.
(g) As a loan originator, represented or attempted to represent a mortgage banker other than the mortgage banker who is registered as employing the loan originator.	(g) As a mortgage loan originator, represent or attempt to represent a mortgage banker or mortgage broker other than the mortgage banker or mortgage broker with whom the mortgage loan originator's license was associated, as identified in the records of the Division at the time the representation or attempted representation occurs.
No provision.	(gd) As a mortgage banker or mortgage broker, permit a person who is not licensed to act as a mortgage loan originator on behalf of the mortgage banker or mortgage broker.
No provision.	(gh) As a mortgage banker or mortgage broker, permit a person whose mortgage loan originator license is not associated in the records of the Division with the mortgage banker or mortgage broker to act as a mortgage loan originator on behalf of the mortgage banker or mortgage broker.
No provision.	(gp) As a mortgage banker or mortgage broker, conduct business at or from a principal office or branch office that is not licensed with the Division.
(h) Failed, within a reasonable time, to account for or remit any moneys coming into the mortgage banker's, loan originator's or mortgage broker's possession which belong to another person.	(h) Fail, within a reasonable time, to account for or remit any moneys coming into the mortgage banker's, mortgage loan originator's, or mortgage broker's possession that belong to another person.
(i) Demonstrated a lack of competency to act as a mortgage banker, loan originator or mortgage broker in a way which safeguards the interests of the public.	(i) Demonstrate a lack of competency to act as a mortgage banker, mortgage loan originator, or mortgage broker in a way that safeguards the interests of the public.

Current Law	Act 2
(j) Paid or offered to pay a commission, money or other thing of value to any person for acts or services in violation of state regulation of the professions.	(j) Pay or offer to pay a commission, money, or other thing of value to any person for acts or services in violation of state regulations.
224.78 Fee splitting. A mortgage banker, loan originator, or mortgage broker may not pay a person who is not a registered mortgage banker, loan originator, or mortgage broker a commission, money, or other thing of value for performing an act as a mortgage banker, loan originator, or mortgage broker.	(jm) Pay a person who is not a licensed mortgage banker, mortgage broker, or mortgage loan originator a commission, money, or other thing of value for performing an act as a mortgage banker, mortgage broker, or mortgage loan originator.
(k) Violated any federal or state statute, rule or regulation which relates to practice as a mortgage banker, loan originator, or mortgage broker.	(k) Violate any federal or state statute, rule, or regulation that relates to practice as a mortgage banker, mortgage loan originator, or mortgage broker.
(L) Engaged in conduct which violates a standard of professional behavior which, through professional experience, has become established for mortgage bankers, loan originators, or mortgage brokers.	(L) Engage in conduct that violates a standard of professional behavior which, through professional experience, has become established for mortgage bankers, mortgage loan originators, or mortgage brokers.
(m) Engaged in conduct, whether of the same or a different character than specified elsewhere in this section, which constitutes improper, fraudulent, or dishonest dealing.	(m) Engage in conduct, whether of the same or a different character than specified elsewhere in these provisions, that constitutes improper, fraudulent, or dishonest dealing.
(o) In the course of practice as a mortgage banker, loan originator, or mortgage broker, except in relation to housing designed to meet the needs of elderly individuals, treated a person unequally solely because of sex, race, color, handicap, sexual orientation, religion, national origin, age, or ancestry, the person's lawful source of income, or the sex or marital status of the person maintaining a household.	(o) In the course of practice as a mortgage banker, mortgage loan originator, or mortgage broker, except in relation to housing designed to meet the needs of elderly individuals, treat a person unequally solely because of sex, race, color, handicap, sexual orientation, religion, national origin, age, or ancestry, the person’s lawful source of income, or the sex or marital status of the person maintaining a household.
(p) Intentionally encouraged or discouraged any person from purchasing or renting real estate on the basis of race.	(p) Intentionally encourage or discourage any person from purchasing or renting real estate on the basis of race.

Current Law	Act 2
(q) Because of the age or location of the property or the race of the loan applicant, rather than because of the credit worthiness of the applicant and the condition of the property securing the loan: (1) refused to negotiate, to offer or to attempt to negotiate a land contract, loan or commitment for a loan, or refused to find a loan; or (2) found a loan or negotiated a loan on terms less favorable than are usually offered.	(q) Because of the age or location of the property or the race of the residential mortgage loan applicant, rather than because of the credit worthiness of the applicant and the condition of the property securing the loan: (1) refuse to negotiate, to offer, or to attempt to negotiate a residential mortgage loan or commitment for a residential mortgage loan, or refuse to find a residential mortgage loan; or (2) find a residential mortgage loan or negotiate a residential mortgage loan on terms less favorable than are usually offered.
(r) Failed to notify the Division that the mortgage banker's or mortgage broker's net worth fell below the minimum amount required, if the mortgage banker or mortgage broker had so qualified for registration.	Repeal provision.
No provision.	(s) Violate, or fail to comply with, any lawful order of the Division.
No provision.	(t) Impede an investigation or examination of the Division or deny the Division access to any books, records, or other information which the Division is authorized to obtain.
No provision.	(tm) Make a material misstatement, or knowingly omit a material fact, or knowingly mutilate, destroy, or conceal any books, records, or other information requested by the Division, in connection with any investigation or examination conducted by the Division or another governmental agency.
No provision.	(u) Solicit or enter into a contract with a borrower that provides in substance that the mortgage banker, mortgage broker, or mortgage loan originator may earn a fee or commission through "best efforts" to obtain a residential mortgage loan even though no residential mortgage loan is actually obtained for the borrower.
No provision.	(um) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.

Current Law	Act 2
No provision.	(v) Assist, aid, or abet any person in unlawfully conducting business as a mortgage banker, mortgage broker, or mortgage loan originator without a valid license.
No provision.	(w) Fail to make disclosures required under applicable state or federal law, rule, or regulation.
No provision.	(x) Withhold any payment or make any payment, threat, or promise, directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan, or withhold any payment or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property.
No provision.	(y) Cause or require a borrower to obtain property insurance coverage in an amount exceeding the replacement cost of improvements on the property, as determined by the property insurer.

Administrative Forfeiture and Hearing Rights. The act increases the forfeiture for violating these professional regulations from not more than $2,000 to not more than $25,000, and would authorize DOB to order restitution to any person suffering loss as a result of the violation. All amounts ordered as restitution would have to be paid to the person suffering loss within 10 days after receipt of notice of the order or, if the restitution order is contested, within 10 days after receipt of the final decision after exhaustion of administrative review.

Division Action on License. Under the act, in addition to any other authority provided to DOB, if it finds that a mortgage banker, mortgage loan originator, or mortgage broker has violated any provision regulating these professions or any rule promulgated by the Division, the Division could do any of the following: (a) deny any application for initial issuance or renewal of a license; (b) revoke, suspend, limit, or condition any license; or (c) reprimand the licensee.

The Division could take any action specified in the previous paragraph against a mortgage banker or mortgage broker based upon any prohibited act or omission of a director, officer, trustee, partner, or member of the mortgage banker or mortgage broker or a person who has a financial interest in or is in any way connected with the operation of the mortgage banker's or mortgage broker's business.

Further, in addition to any other authority provided DOB, if it finds that an applicant for initial issuance or renewal of a license made any material misstatement in the application or withheld material information, or that the applicant no longer satisfies the requirements for issuance or renewal of the license, the Division could deny the application or, if the license has already been issued, suspend or revoke the license.

Orders to Prevent or Correct Actions. In addition to DOB's current law authority, the act provides that the Division could issue general and special orders, including temporary orders that become immediately effective, to prevent or correct actions by a mortgage banker, mortgage loan originator, or mortgage broker that constitute a violation of any provision or rule governing these professions, including special orders that do any of the following: (a) direct a licensee to cease business under the person's license if the Division determines that the license was erroneously issued or the licensee is currently in violation of any provision or rule governing the professions; or (b) direct a licensee to undertake any affirmative action, consistent with these regulations, that the Division deems necessary.

Voluntary Surrender. Under current law, DOB may refuse to accept the surrender of a registration if the Division has received allegations of unprofessional conduct against the mortgage banker, loan originator, or mortgage broker. The act expands this right of refusal to provide that the Division could also refuse to accept the surrender of a license if the Division has an open investigation or examination in regards to the licensee.

Reporting Violations. The act requires DOB to regularly report violations of these provisions or of rules promulgated under these provisions, as well as enforcement actions and other relevant information, to the NMLSR. Except for providing access to these materials to state or federal regulatory agencies or to the public relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against mortgage loan originators, these reports would have to be kept confidential by NMLSR.

Oversight by the Division of Banking

Annual Report. Under current law, each year a mortgage banker or mortgage broker must generally submit to the Division an annual report relating to the mortgage banker’s or mortgage broker’s operations during its most recently completed fiscal year. The act modifies this requirement by providing that each year by the date and in the form required by the NMLSR, each licensed mortgage banker, mortgage broker, and mortgage loan originator must submit to the NMLSR an annual report of condition, which must contain such information as NMLSR may require.

Examination and Investigation. Under current law, DOB may at any time, on its own motion or upon complaint, examine the books of account, records, condition and affairs of a registered mortgage banker, loan originator, or mortgage broker. The Division must prepare a report of each examination conducted. As a part of the examination or preparation of the report, the Division may examine under oath any of the members, officers, directors, agents, employees, or customers of the mortgage banker, loan originator, or mortgage broker. The Division may require a mortgage banker, loan originator, or mortgage broker who is examined to pay to the Division a reasonable fee for the costs of conducting the examination. Examination reports and correspondence regarding the reports are confidential, except that the Division may release examination reports and correspondence in connection with a disciplinary proceeding conducted by the Division, a liquidation proceeding, or a criminal investigation or proceeding.

Under the act, the Division could at any time, on its own motion or upon complaint, conduct inquiries, investigations, and examinations of licensees, or of persons required to be licensed under or otherwise subject to these regulations, including doing any of the following:

a. Examining, accessing, receiving, or using any books, accounts, records, files, documents, or other information relating to the condition or affairs of a mortgage banker, mortgage loan originator, or mortgage broker.

b. Interviewing or examining under oath any mortgage banker, mortgage loan originator, or mortgage broker, any of the members, officers, directors, agents, employees, contractors, or customers of the mortgage banker, mortgage loan originator, or mortgage broker, or any other person whose testimony the Division deems to be relevant. The Division could direct, subpoena, or order the attendance of a person to provide testimony and could direct, subpoena, or order the person to produce books, accounts, records, files, and any other document the Division deems relevant to the inquiry, investigation, or examination.

c. Direct or order any licensee to make or compile reports or other information, in a format directed by the Division, that the Division considers necessary to carry out any investigation or examination, including any accounting compilation or other loan transaction data, list, or information.

d. Examine, access, receive, and use any other records, documents, or other information that the Division deems relevant to the inquiry, investigation, or examination, regardless of the location, possession, control, or custody of the records, documents, or information, including any of the following: (1) criminal, civil, and administrative history information, including conviction information and nonconviction information to the extent permitted by law; and (2) personal history and experience information, including credit reports obtained from a consumer reporting agency.

In making any authorized investigation or examination, the Division could control access to any documents and records of the licensee or of any other person under investigation or examination. The Division could take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person could remove or attempt to remove any of the documents and records except with the consent of the Division or by court order. Unless the Division has reasonable grounds to believe the documents and records have been or are at risk of being altered or destroyed for purposes of concealing a violation, the licensee or owner or custodian of the documents and records would have access to the documents and records as necessary to conduct its ordinary business affairs.

As under current law, DOB would be required to prepare a report for each investigation or examination. These reports, and correspondence regarding these reports, would be confidential, except that the Division could release these reports and correspondence in connection with a disciplinary proceeding conducted by the Division, a liquidation proceeding, or a criminal investigation or proceeding. In addition, any information from these reports or correspondence could be provided to the NMLSR (subject to the NMLSR confidentiality provisions discussed earlier).

The Division could require a licensee who is investigated or examined to pay to the Division a reasonable fee for the costs of conducting the investigation or examination, as is the case under present law. These costs would have to paid within 30 days after the Division demands payment of these costs.

To carry out these investigative and examination responsibilities, the Division would be authorized to do any of the following:

a. Retain attorneys, accountants, and other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of investigations or examinations.

b. Enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, or information.

c. Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate any licensee or other person subject to investigation or examination.

d. Accept and rely on investigation or examination reports made by other government officials, in this state or elsewhere.

e. Accept audit reports made by an independent certified public accountant for the licensee or another person relevant to the investigation or examination and incorporate any such audit report into any report of the Division.

Penalties

Under current law, any person who violates the requirements to register as a mortgage banker, mortgage broker, or loan originator, may be fined not more than $2,000 or imprisoned for not more than nine months or both. Under the act, any violation of state regulation of these professions would subject the person to a fine of not more than $25,000 or imprisonment for not more than nine months or both.

Private Cause of Action

Under current law, if a person is aggrieved by a statutorily prohibited act (identified in the prior table) committed by a mortgage banker, loan originator, or mortgage broker, the person may recover in a civil court action an amount equal to the greater of the following: (a) twice the amount of the cost of loan origination connected with the transaction, except that the liability may not be less than $100 nor greater than $2,000 for each violation; or (b) the actual damages, including any incidental and consequential damages, which the person sustained because of the violation. The person may also recover the aggregate amount of costs and expenses which the court determines were reasonably incurred by the person in connection with the action, together with reasonable attorney fees.

The act expands this private cause of action to cover any violation of state regulation of these professions, including any rule promulgated under these regulations. In addition, the act increases the possible recovery associated with loan origination costs from not greater than $2,000, to not greater than $25,000 for each violation.

Loan Processors and Underwriters

The act specifies that an individual engaging solely in loan processor or underwriter activities could not represent to the public, through advertising or another means of communication such as the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

Licensing Forms

The act specifies that forms prescribed by DOB in connection with its responsibilities to license mortgage bankers, mortgage brokers, and mortgage loan originators are not considered to be administrative rules subject to the administrative rule process.

Mortgage Loan Originator Council

Under current law, there exists a Loan Originator Review Council created in DFI. The council consists of the following members, appointed by the Secretary of DFI for four year terms: (a) three persons who are registered loan originators; (b) one person who is an agent of a registered mortgage broker; (c) one person who is an agent of a registered mortgage banker; (d) one person who is a loan solicitor; and (e) the Secretary of DFI or his or her designee.

Under the act: (a) the council is renamed the Mortgage Loan Originator Council; (b) the number of licensed mortgage loan originators on the council is increased from the current law three to four; and (c) the council no longer has a loan solicitor member.

Transition

The act includes nonstatutory provisions that requires DOB to, by rule, institute a system of initial license issuance or license renewal that it deems advisable for the purpose of implementing an orderly and efficient transition from the registration system under current law to the license system under the act. The transition system could include the requirement that existing registrants apply for a license and pay any applicable fees, before the scheduled expiration of their current registration period. The transition system could also provide for the initial issuance of licenses that are valid for an initial period that is greater or less than the ordinary valid period of such licenses. If a transition system results in a shorter registration or license period than that which would ordinarily be applicable, DOB would have to prorate or rebate fees corresponding to the unused or unexpired portion of the ordinarily applicable registration or license period. For previously registered or licensed individuals, the Division could establish under the transition system expedited review and licensing procedures.

The Division would have to submit in proposed form the required rules to the Legislative Council no later than 60 days after the act's general effective date.

Using the emergency rules procedure, the Division would have to promulgate the required rules for the period before the effective date of the permanent rules submitted under the prior paragraph. The Division would have to promulgate these emergency rules no later than 60 days after the act's general effective date. These emergency rules would remain in effect until July 1, 2011, or the date on which permanent rules take effect, whichever is sooner. DOB would not have to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and would not be required to provide a finding of emergency.

Effective Date

The act provisions relating to the licensure of mortgage bankers, mortgage brokers, and mortgage loan originators would take effect on January 1, 2010, or on the 60th day after publication of the act, whichever is later.

Fiscal Effect

Under current law, loan originators register and pay a $250 fee on a biennial basis. Under the act, mortgage loan originators would have to be relicensed and pay at least a $250 fee on an annual basis. It is estimated that this change would generate an additional $750,000 in program revenue for DFI in 2010-11, which would be deposited in the agency's general program operations appropriation. The statutes provide that any unspent funding in that appropriation lapses to the general fund at the end of each fiscal year. Therefore, the increased program revenue would also result in a corresponding increase of $750,000 GPR-Earned in 2010-11.

Compliance with Federal Law

Under the federal Housing and Economic Recovery Act of 2008, the federal government adopted the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," or "S.A.F.E. Mortgage Licensing Act of 2008" [SAFE Act]. The SAFE Act develops minimum standards for the regulation of loan originators. The Act further provides that if a state fails to adopt these minimum standards, that the federal government (through the federal Department of Housing and Urban Development) will assume the regulation of loan originators from the state consistent with the provisions of the SAFE Act.

Subsequent to the passage of the SAFE Act, the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators developed model legislation to comply with the provisions of the SAFE Act and to permit states to continue to regulate their loan originators. The modifications of state law regarding the regulation of mortgage bankers, brokers, and loan originators included in the budget adjustment act are intended to adopt the provisions of the model legislation. While the federal SAFE Act primarily develops minimum standards for the regulation of loan originators, the model legislation and provisions of the act also amend state law regulating mortgage bankers and mortgage brokers.

[Act 2 Sections: 3 thru 5, 67, 220, 555, 560 thru 716, 718, 759, 767, 769, 782 thru 788, 853, 9117(1), and 9417(1)]

HOUSING

1. TENANT PROTECTIONS IN FORECLOSURE ACTIONS

Require notice be given to tenants or prospective tenants of foreclosure actions against residential rental property. Under current law, notice to tenants is not required. Specifically, the act includes the following provisions:

Prospective Tenants. Require that, during the pendency of the foreclosure action and before the redemption period (between three months and one year when the property owner may redeem the property before sale by paying the judgment owed), the property owner must notify any prospective tenant in writing that: (a) a foreclosure action has been commenced; and (b) if judgment has been entered, the date when the redemption period expires. Further, any rental agreement entered into during this period must include a separate written statement, signed by the tenant, that the owner has provided written notice. The rental agreement is voidable at the option of the tenant if it does not include the written statement.

Current Tenants. If a residential rental property is subject to a foreclosure action, require the plaintiff (usually a financial institution) to provide the following notices to tenants: (a) no later than five days after the action is filed, notice that the plaintiff has commenced a foreclosure action; (b) no later than five days after the foreclosure judgment is entered, notice that the plaintiff has been granted judgment and the date on which the redemption period ends; and (c) upon scheduling of a confirmation of sale hearing, the date and time of the hearing. Notices may be given by personal service or certified mail with return receipt requested.

If the plaintiff fails to provide notice as required above, courts must award the tenant $250 damages, plus reasonable attorney fees. A tenant may not recover for more than one notice violation.

Tenant Possession and Withholding of Rent. Specify that, if a tenancy is terminated as a result of a foreclosure judgment against a rental property, all of the following apply: (a) the tenant may retain possession of the rental unit up to two months after the end of the month in which the sale of the property is confirmed (subject to (c) below); (b) the tenant may withhold rent in an amount equal to the security deposit during the last month of possession, regardless of whether the tenant retains possession after the sale is confirmed; and (c) the tenant's right to retain possession of the rental unit expires at the end of the month for which the tenant withholds rent. If the tenant retains possession of the rental unit after the sale is confirmed, the tenant is required pay rent at the same rate that applied immediately before the confirmation.

Unless waived in writing by the tenant, no civil action for the removal of the tenant, whose tenancy is terminated as the result of foreclosure judgment, may be executed before the end of the second month, beginning after the month in which the sale of property is confirmed.

Exclusion of Information from CCAP. If a civil action is commenced concerning the removal of a tenant from a residential rental property, specify that no information may be included on the court system's Wisconsin Circuit Court Access (WCCA) website, if the removal is the result of a mortgage foreclosure. Currently, the state court system operates the Consolidated Court Automation Programs (CCAP), which serves as a case management system and provides access to certain public records through the WCCA website.

Initial Applicability. Specify that the provisions apply to foreclosure actions commenced on the effective date of the act and with rental agreements that are entered into on the effective date of the act. Specify that the provisions related to exclusion of information from CCAP take effect on the first day of the fourth month beginning after publication.

[Act 2 Sections: 847, 850, 9357(3)&(4), and 9409]

2. TENANT RESOURCE CENTER GRANT

	2008-09
GPR	$200,000

Provide $200,000 in 2008-09 to the Department of Commerce housing grants and loans appropriation. Direct Commerce to use the funds to award a grant of not more than $200,000 to the Tenant Resource Center in Madison to provide foreclosure education and assistance to tenants throughout the state. (Administration officials indicate the intent is to primarily provide assistance to tenants of properties where the property owner is subject to a foreclosure action.) The Tenant Resource Center is a nonprofit organization that provides information and counseling to residential tenants and landlords about their rights and responsibilities, provides low-cost or free mediation services in tenant-landlord disputes, and conducts housing law workshops.

[Act 2 Sections: 10, 9110(1), and 9210(1)]

3. REGULATION OF FORECLOSURE RECONVEYANCES AND FORECLOSURE CONSULTANTS

Create regulations relating to foreclosure reconveyances and foreclosure consultants. Under a foreclosure reconveyance, an owner of a home being foreclosed could transfer title to the property to a foreclosure purchaser. The foreclosure purchaser would redeem the property from foreclosure and convey to the foreclosed homeowner an interest in the property that would allow the foreclosed homeowner to remain in possession of the property. A foreclosure consultant could offer services, for compensation, to a foreclosed homeowner, to assist the foreclosed homeowner.

Regulation of Foreclosure Reconveyances

Definitions. Define the following terms:

a. "Foreclosure reconveyance" means a transaction involving: (1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by a transfer of interest from the foreclosed homeowner or by the creation of a mortgage or other lien or encumbrance during the foreclosure process; and (2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property, which interest includes an interest in a land contract, purchase agreement, option to purchase, or lease.

b. "Foreclosed homeowner" means an owner of a residence in foreclosure.

c. "Foreclosure purchaser" means a person that acts as the acquirer in a foreclosure reconveyance. "Foreclosure purchaser" also includes a person that has acted in joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance. "Foreclosure purchaser" does not include: (1) a natural person who shows that he or she is not in the business of foreclosure purchasing and who has a prior personal relationship with the foreclosed homeowner; and (2) a federal or state chartered bank, savings bank, savings and loan association, or credit union.

d. "Closing" means an in-person meeting to complete final documents incident to the sale of real property or the creation of a mortgage on real property that is conducted by a closing agent who is not employed by, an affiliate of, or employed by an affiliate of, any foreclosure purchaser involved in the closing, and who does not have a business or personal relationship with any foreclosure purchaser involved in the closing other than the provision of real estate settlement services.

e. "Primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, fire and casualty insurance, real estate taxes, and association dues.

f. "Resale" means a bona fide market sale of the property subject to the foreclosure reconveyance by the foreclosure purchaser to an unaffiliated third party.

g.	"Resale price" means the gross sale price of the property on resale.

h.	"Residence in foreclosure" means residential real property located in this state that consists of one to four family dwelling units where there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including land contract payments. The owner of the residential real property may, but is not required to, occupy the residential real property as the owner's principal place of residence.

Contract Provisions. A foreclosure purchaser that enters into any foreclosure reconveyance would be required to do so by a written contract. Every contract would be: (a) written in letters of not less than 12-point boldface type; (b) both in English and in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure if other than English; and (c) fully completed, signed, and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

Every contract would have to contain the entire agreement of the parties and include all of the following: (a) the name, business address, and telephone number of the foreclosure purchaser; (b) the address of the residence in foreclosure; (c) the total consideration to be given by the foreclosure purchaser in connection with or incident to the sale; (d) a complete description of the terms of payment or other consideration, including any services of any nature that the foreclosure purchaser represents he or she will perform for the foreclosed homeowner before or after the sale; (e) the time at which possession is to be transferred to the foreclosure purchaser; (f) a complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in possession of the home, such as a rental agreement, repurchase agreement, land contract, or lease with option to purchase; (g) the time when the fair market value of the property is determined; and (h) a notice of cancellation.

The contract would survive delivery of any instrument of conveyance (deed) of the residence in foreclosure and would have no effect on persons other than the parties to the contract. The foreclosure purchaser would provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation form at the time the contract is executed by all parties.

Any waiver of the provisions of the foreclosure reconveyance provisions would be void and unenforceable as contrary to public policy. However, a foreclosed homeowner may waive a five-day right to cancel period (described below) if the property is subject to a foreclosure sale within the five business days and the foreclosed homeowner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

Any provision in a contract entered into on or after the effective date of the act that attempts or purports to require arbitration of any dispute arising under the contract is void at the option of the foreclosed homeowner.

Contract Cancellation. The foreclosed homeowner would have the right to cancel any contract with a foreclosure purchaser until midnight of the fifth business day following the day on which the foreclosed homeowner signs a contract for a foreclosure conveyance or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first. The five-day period during which the foreclosed homeowner may cancel the contract would not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with the provisions of the notice. (Under current law, the mortgagee (typically the financial institution that holds the mortgage) may begin a foreclosure action if the borrower defaults on making mortgage payments. The property owner (mortgagor) may redeem the property before a sheriff's sale by paying the amount of judgment to the Clerk of Court.)

To cancel the contract, the foreclosed homeowner would have to deliver to the foreclosure purchaser, personally or by certified mail, a signed and dated written notice of cancellation. The notice of cancellation form must be attached to the contract and must contain a street or physical address to which notice of cancellation may be mailed by certified mail or personally delivered. A post office box may be designated for delivery by certified mail only if it is accompanied by a street or physical address at which the notice may be personally delivered. If the notice of cancellation is personally delivered, the foreclosure purchaser must provide a receipt to the foreclosed homeowner. If cancellation is mailed by certified mail, delivery is effective when the notice of cancellation is deposited in the U.S. mail. If cancellation is personally delivered, delivery is effective when the notice of cancellation is handed to the foreclosure purchaser.

A notice of cancellation given by the foreclosed homeowner would not need to be in a particular form. Within 10 days following receipt of a notice of cancellation from the foreclosed homeowner, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

Notice of Cancellation. The contract would have to contain a notice of cancellation located conspicuously, and in immediate proximity to, the space reserved for the foreclosed homeowner's signature. The following statement would have to be included in not less than 14-point boldface type if the contract is printed or in capital letters if the contract is typed:

> "You may cancel this contract for the sale of your house without any penalty or obligation at any time before .... (date and time of day). See the attached notice of cancellation form for an explanation of this right." (The foreclosure purchaser would enter the date and time of day on which the cancellation right ends.)

Immediately above this statement, the contract would have to include, in not less than 14-point boldface type if the contract is printed or in capital letters if the contract is typed, and completed with the name of the foreclosure purchaser, the following notice:

> "NOTICE REQUIRED BY WISCONSIN LAW
>
> Until your right to cancel this contract has ended, ... (Name of foreclosure purchaser) or anyone working for .... (Name of foreclosure purchaser) CANNOT ask you to sign or have you sign any deed or any other document. (b) The

contract required by this subsection survives delivery of any instrument of conveyance of the residence in foreclosure and has no effect on persons other than the parties to the contract."

The contract would have to be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in 12-point boldface type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes the contract. The form must be attached to the contract, must be easily detachable, and must contain, in not less than 10-point type if the contract is printed or in capital letters if the contract is typed, the following statement:

"NOTICE OF CANCELLATION (Enter date contract signed)

1. You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before .... (date and time of day).

2. To cancel this transaction, you may mail by certified mail or personally deliver a signed and dated copy of this notice of cancellation to .... (name of purchaser) at .... (street or physical address of purchaser's place of business) NOT LATER THAN .... (date and time of day). If you personally deliver this notice of cancellation, ... (name of purchaser) must give you a receipt.

3. I hereby cancel this transaction.

(Date) ....

(Seller's signature) ...."

Requirements and Prohibitions. A foreclosure purchaser would have to satisfy all of the following before entering into a foreclosure reconveyance with a foreclosed homeowner:

a. The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that a foreclosed homeowner is reasonably able to pay for the subsequent conveyance if the foreclosed homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed 60 percent of the foreclosed homeowner's monthly gross income. There is a rebuttable presumption that the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities, and income.

b. The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner.

c. The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property.

A foreclosure purchaser would be required to either: (a) ensure that title to the subject dwelling has been reconveyed to the foreclosed homeowner; or (b) make a payment to the foreclosed homeowner such that the foreclosed homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property within 150 days after either the eviction of, or voluntary relinquishment of possession of the dwelling by, the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting shall be on a form prescribed by the Attorney General (AG), in consultation with the Secretary of the Department of Agriculture, Trade and Consumer Protection (DATCP). The form prescribed by the Attorney General would not be considered an administrative rule under Wisconsin law and would not be subject to the administrative rule process.

"Consideration" means any payment or thing of value provided to the foreclosed homeowner, including unpaid rent or land contract payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to third parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner, the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner, or a penalty imposed by a court for the filing of a frivolous claim in an eviction action. "Consideration" does not include amounts imputed as a down payment or fee to the foreclosure purchaser, or a person acting in participation with the foreclosure purchaser, incident to a land contract, lease, or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to third parties necessary to complete the foreclosure reconveyance.

In determining the fair market value as part of the foreclosure purchase process, there would be a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the property. The time for determining the fair market value amount would be specified in the foreclosure reconveyance contract as either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value shall be determined at the time of resale, the fair market value shall be the resale price if it is sold within 120 days after the eviction of, or voluntary relinquishment of the property by, the foreclosed homeowner. If the contract states that the fair market value shall be determined at the time of resale, and the resale is not completed within 120 days after the eviction of, or voluntary relinquishment of the property by, the foreclosed homeowner, the fair market value shall be determined by an appraisal conducted during this 120-day period and payment, if required, shall be made to the foreclosed homeowner. The fair market value shall be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, shall be made to the foreclosed homeowner within 15 days after resale, and a detailed accounting of the basis for the payment amount, or a detailed accounting of the reasons for failure to make additional payment, shall be made within 15 days after resale, including providing written documentation of expenses. The accounting shall be on a form prescribed by the AG, in consultation with the Secretary of DATCP.

A foreclosure purchaser would not be allowed to enter into repurchase or lease terms as part of the subsequent conveyance that are unfair or commercially unreasonable, or engage in any other unfair conduct. A foreclosure purchaser may not represent, directly or indirectly, any of the following: (a) that the foreclosure purchaser is acting as an advisor or consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the foreclosed homeowner; (b) that the foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue; (c) that the foreclosure purchaser is assisting the foreclosed homeowner to save the house, or a substantially similar phrase; or (d) that the foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property.

A foreclosure purchaser would not be allowed to make any other statements, directly or by implication, or engage in any other conduct that is false, deceptive, or misleading, or that has the likelihood to cause confusion or misunderstanding, including statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner will receive after a foreclosure sale, any contract term, or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

During the five-day right to cancel period for the foreclosed homeowner, a foreclosure purchaser may not do any of the following: (a) accept from the foreclosed homeowner an execution of, or induce the foreclosed homeowner to execute, any instrument of conveyance of any interest in the residence in foreclosure; (b) record or file with the register of deeds any document, including any instrument of conveyance, signed by the foreclosed homeowner; (c) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any third party, provided no grant of any interest or encumbrance is defeated or affected as against a bona fide purchaser or encumbrance for value and without notice of a violation of this subdivision. Knowledge on the part of any such person or entity that the property was residential real property in foreclosure does not constitute notice of a violation of this subdivision. This provision would not abolish any duty of inquiry that exists as to rights or interests of persons in possession of the residence in foreclosure; or (d) pay the foreclosed homeowner any consideration.

If a foreclosure purchaser extends credit to, or arranges for credit to be extended to, the foreclosed homeowner, the foreclosure purchaser or other person with whom the foreclosure purchaser has arranged for the extension of credit shall comply with requirements specified in the federal Truth in Lending Act, that apply to a creditor in a residential mortgage transaction, regardless of whether the foreclosure purchaser or other person extending credit actually meets the definition of a creditor.

Eviction Actions. A court hearing an eviction action against a foreclosed homeowner shall stay the proceedings, without the imposition of a bond, if the foreclosed homeowner makes a prima facie showing of all of the following: (a) he or she has commenced an action concerning a foreclosure reconveyance with respect to the property that is the subject of the eviction action, or the defendant asserts, in connection with a foreclosure reconveyance, any violation of this provision or a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice; (b) he or she owned the foreclosed residence; (c) he or she conveyed title to the foreclosed residence to a third party upon a promise that the foreclosed homeowner would be allowed to occupy the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the foreclosed residence or other real property would be the subject of a foreclosure reconveyance; and (d) since the conveyance to the third party, he or she has continuously occupied the foreclosed residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest.

The foreclosed homeowner could use notarized affidavits to meet the burden of proof. He or she could request, and upon a showing of good cause the court could grant, up to an additional two weeks to produce evidence to make the prima facie showing required in the court action.

The stay of eviction proceedings would remain in effect for 90 days if the foreclosed homeowner has not yet commenced and does not commence, within 90 days from the issuance of the stay, an action in connection with a foreclosure reconveyance transaction. If he or she has commenced, or commences within 90 days from the issuance of the stay, an action in connection with a foreclosure reconveyance transaction, the stay shall remain in effect until the court hearing the action related to the foreclosure reconveyance renders a final decision in the matter.

Enforcement and Penalties. A violation of the foreclosure reconveyance provisions would be considered a fraud. A foreclosed homeowner against whom a violation of the provisions is committed may bring an action for damages. A court could order punitive damages for a violation. A foreclosure purchaser who violates these provisions by engaging in any practice that would operate as a fraud or deceit upon a foreclosed homeowner may be fined not more than $50,000 or imprisoned for not more than one year in the county jail, or both. In the absence of additional misconduct, a failure of the parties to complete a foreclosure reconveyance transaction would not subject a foreclosure purchaser to criminal penalties.

The regulation of foreclosure reconveyances first applies to foreclosure reconveyances that are entered into on the effective date of the act.

Regulation of Foreclosure Consultants

Definitions. Define the following terms:

a. "Contract" means an agreement, or any term in an agreement, between a foreclosure consultant and a foreclosed homeowner for the rendition of any service.

b. "Foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, representation, or offer to a foreclosed homeowner to perform for compensation, or who for compensation performs, any service that the person in any manner represents will in any manner do any of the following: (1) stop or postpone the foreclosure sale; (2) obtain any forbearance from a beneficiary or mortgagee; (3) obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a mortgage on the residence in foreclosure or contained in the mortgage; (4) assist the foreclosed homeowner to obtain a loan or advance of funds; (5) avoid or ameliorate the impairment of the foreclosed homeowner's credit resulting from the recording of a pending court action or the conduct of a foreclosure sale; or (6) save the residence in foreclosure from foreclosure.

c. "Foreclosure consultant" does not include any of the following: (1) a person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney at law; (2) a person licensed as a real estate broker or salesperson when the person engages in acts for which licensure is required, unless the person is engaged in offering services designed to, or purportedly designed to, enable the foreclosed homeowner to retain possession of the residence in foreclosure; (3) a person certified or licensed to practice as a certified public accountant when the person is acting in any capacity for which the person is certified or licensed; (4) a person, or the person's authorized agent, acting under the express authority or written approval of the department of housing and urban development or other department or agency of the United States or this state to provide services; (5) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance; (6) a person or entity doing business under any law of this state, or of the United States, relating to a financial institution, to a licensed lender, to an insurance company, or to a mortgagee that is a federal Department of Housing and Urban Development approved mortgagee; a subsidiary or affiliate of any of these persons or entities; or an agent or employee of any of these persons or entities while engaged in the business of these persons or entities; (7) a person registered as a mortgage banker, loan originator, or mortgage broker, when acting under the authority of that registration; (8) a judgment creditor of the foreclosed homeowner, to the extent that the judgment creditor's claim accrued prior to the recording of the court foreclosure action; (9) a foreclosure purchaser; or (10) a licensed adjustment service company, but only when engaged in business unrelated to real estate (an adjustment service company assumes the obligations of a debtor by purchasing accounts the debtor may have with creditors, for a service charge or other consideration).

d. "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

e. "Service" includes any of the following: (1) debt, budget, or financial counseling of any type; (2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure; (3) contacting creditors on behalf of a foreclosed homeowner; (4) arranging or attempting to arrange for a delay or postponement of the time of sale of the residence in foreclosure; (5) advising the filing of any document, or assisting in any manner in the preparation of any document for filing, with a bankruptcy court; or (6) giving any advice, explanation, or instruction to a foreclosed homeowner that in any manner relates to curing a default in or reinstating an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, under a power of sale contained in any mortgage.

Foreclosure Consultant Contract. Every contract between a foreclosure consultant and a foreclosed homeowner must be in writing and must fully disclose the exact nature of the foreclosure consultant’s services and the total amount and terms of compensation.

The contract must be written both in English and in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract if other than English, must be dated and signed by the foreclosed homeowner, and must contain in immediate proximity to the space reserved for the foreclosed homeowner’s signature, in not less than 10-point boldface type, the following statement: "You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The following notice, printed in not less than 14-point boldface type and completed with the name of the foreclosure consultant, must be printed immediately above the statement related to the three day cancellation period:

"NOTICE REQUIRED BY WISCONSIN LAW

.... (name of foreclosure consultant) or anyone working for him or her CANNOT do any of the following:

1. Take any money from you or ask you for money until .... (name of foreclosure consultant) has completely finished doing everything he or she said he or she would do.

2. Ask you to sign or have you sign any lien, mortgage, or deed."

Contract Cancellation. A foreclosed homeowner would have the right to cancel a contract until midnight of the third business day after the day on which the foreclosed homeowner signs a contract. Cancellation would occur when the foreclosed homeowner delivers, personally or by certified mail, written notice of cancellation to the foreclosure consultant at the foreclosure consultant’s address specified in the contract. If notice of cancellation is given by certified mail, cancellation is effective when the notice is deposited in the U.S. mail, properly addressed with postage prepaid. If notice of cancellation is personally delivered, the foreclosure consultant must give the foreclosed homeowner a receipt. Cancellation, if personally delivered, is effective when the foreclosed homeowner hands the notice to the foreclosure consultant.

A notice of cancellation given by the foreclosed homeowner would not need to take a particular form. The notice is effective if it indicates the intention of the foreclosed homeowner not to be bound by the contract.

Notice of Cancellation. The notice of cancellation form, and the contract must contain on the first page, in a type size that is no smaller than that generally used in the body of the document, the name and street or physical address of the foreclosure consultant to which the notice of cancellation is to be mailed by certified mail or personally delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by certified mail only if it is accompanied by a street or physical address at which the notice may be personally delivered. The form would also have to include the date the foreclosed homeowner signed the contract.

The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION." This form must be attached to the contract, must be easily detachable, and must contain, in not less than 10-point type and written in the same language or languages as used in the contract, the following statement:

"NOTICE OF CANCELLATION

(Enter date of transaction)

1. You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

2. To cancel this transaction, you may either mail by certified mail or personally deliver a signed and dated copy of this notice of cancellation, or any other written notice of cancellation, to .... (name of foreclosure consultant) at .... (street or physical address of foreclosure consultant's place of business) NOT LATER THAN MIDNIGHT OF .... (date). If you personally deliver a notice of cancellation, ... (name of foreclosure consultant) must give you a receipt.

3. I hereby cancel this transaction.

(Date) ....

(Owner's signature) ...."

Requirements and Prohibitions. The foreclosure consultant would have to provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract. The three business days during which the foreclosed homeowner may cancel the contract shall not begin to run until the foreclosure consultant has complied with this provision.

A foreclosure consultant would be prohibited from doing any of the following:

a. Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that he or she would perform.

b. Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 8 percent per year of the amount of any loan that the foreclosure consultant may make to the foreclosed homeowner. Any loan may not be secured by the residence in foreclosure or any other real or personal property.

c. Take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation. Any security taken to secure the payment of compensation is void and unenforceable.

d. Receive any consideration from any third party in connection with services rendered to a foreclosed homeowner unless the consideration is first fully disclosed to the foreclosed homeowner.

e. Acquire any interest, directly or indirectly or by means of a subsidiary or affiliate, in a residence in foreclosure from a foreclosed homeowner with whom the foreclosure consultant has contracted.

f. Except as otherwise provided by law, take any power of attorney from a foreclosed homeowner for any purpose.

g. Induce or attempt to induce any foreclosed homeowner to enter into a contract that does not comply with the requirements of the contract and notice of cancellation of the contract.

h. Fail to give a receipt to a foreclosed homeowner if the foreclosed homeowner personally delivers timely written notice of cancellation of a contract.

Any waiver by a foreclosed homeowner of this provision or of a foreclosed homeowner's rights under these provisions would be void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce a foreclosed homeowner to waive the foreclosed homeowner's rights is a violation of these provisions.

Any provision in a contract entered into on or after the effective date of the act, that attempts or purports to require arbitration of any dispute arising under this provision is voidable at the option of the foreclosed homeowner.

If any of the foreclosure consultant provisions are inconsistent with s. 218.02 statutory requirements for adjustment service companies, with respect to a foreclosure consultant that is licensed under s. 218.02 and engages in adjustment service company business related to real estate, these provisions would supersede any conflicting provision of s. 218.02.

Enforcement and Penalties. The Department of Agriculture, Trade and Consumer Protection (DATCP) would be authorized to investigate violations of these provisions, and to commence an action. In addition to providing any equitable relief, the court may award any person who suffered a pecuniary loss because of the violation twice the amount of the pecuniary loss or $200, whichever is greater, for each violation.

Any person suffering a pecuniary loss because of a violation of these provisions may take action against the violator. If the court determines that the person suffered a pecuniary loss because of the violation, the court would award the person twice the amount of the pecuniary loss or $200, whichever is greater, for each violation, together with costs and reasonable attorney fees.

DATCP or a District Attorney may commence an action to recover a forfeiture of not less than $100 nor more than $10,000 for a violation. Violators could be fined not less than $25 nor more than $10,000 or imprisoned for not more than one year in the county jail, or both.

The Department of Justice would be required to provide all legal services required by DATCP to enforce the regulation of foreclosure consultants.

The regulation of foreclosure consultants would first apply to agreements between foreclosure consultants and owners of residential real property that are entered into on the effective date of the act.

[Act 2 Sections: 558, 717, 848, 849, 851, 852, and 9357(1)&(2)]

WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY

1. MORTGAGE LOAN REFINANCING

Authorize WHEDA to make loans for the acquisition or replacement (refinancing) of qualified subprime mortgage loans or be a party to such loans made through authorized lenders. Additionally, authorize WHEDA to issue bonds and notes for loans made to refinance qualified subprime mortgage loans.

Qualified subprime mortgage loans would be defined as adjustable-rate, single-family, residential mortgage loans made after December 31, 2001, and before January 1, 2008. An eligible refinancing loan must meet the following conditions: (1) be for a term of no more than 30 years; (2) be made for an eligible property that was and will continue to be the primary residence of the person applying for a refinancing loan; (3) the existing mortgage was financed by a qualified subprime loan and has not been previously refinanced; (4) the original subprime mortgage is reasonably likely to cause financial hardship to the applicant if not refinanced, as determined by WHEDA; (5) monthly mortgage payments must include principal, interest, property taxes and various types of insurance, including but not limited to mortgage insurance, homeowner's insurance and, if applicable, flood insurance; and (6) the applicant must not appear on the state lien docket for delinquent child-support payments, or must present an approved payment agreement.

The act also requires that qualified (tax-exempt) mortgage revenue bonds issued for refinancing of qualified subprime loans must comply with applicable requirements in the U.S. Internal Revenue Code. One such requirement is that proceeds of qualified mortgage bonds must be used to refinance qualified subprime loans within 12 months of the date of the bond issuance. The act also requires the Secretary of Administration to determine a date after which WHEDA may not issue bonds for use in refinancing qualified subprime mortgage loans. Federal law currently requires that qualified mortgage revenue bonds be issued prior to December 31, 2010, to be used for refinancing qualified subprime loans. As is required with current first-mortgage programs, the executive director of the Authority would be required to make every effort to encourage participation of women and minorities in the refinancing program.

Under current law, WHEDA has authority to make homeownership mortgage loans to low- and moderate-income applicants who are generally first-time homebuyers for the construction, long-term financing or qualified rehabilitation of eligible properties. Eligible properties include single-family dwellings, duplexes, three- or four-unit residential structures at least five years old or condominium units, and a property must be the principal residence of an applicant. Homeownership mortgage loans currently may not finance the acquisition or replacement (refinancing) of an applicant's existing mortgage.

[Act 2 Sections: 763, 765, 770 thru 775, 777, 778, and 9325(1)]

2. HELP PROGRAM

	2008-09
GPR	$4,000,000

Create a homeowner eviction and lien protection (HELP) program to encourage lending institutions to refinance mortgage loans for borrowers unable to otherwise secure refinancing. Provide the Wisconsin Housing and Economic Development Authority (WHEDA) $4,000,000 GPR in 2008-09 in a continuing appropriation for the program, with any unencumbered balance to lapse to the state's general fund on June 30, 2010. Further, require WHEDA to report quarterly to the Joint Committee on Finance on the progress and performance of the program, and authorize the Committee Co-chairs to convene a meeting at any time to review or dissolve the program.

The program intent is to encourage lenders, which are defined as banking institutions, savings banks, savings and loan associations or credit unions that have an office in Wisconsin, to refinance mortgage loans on eligible properties. Subject to the approval of all members of the Authority, the act authorizes WHEDA to enter into agreements with lenders for the refinancing of a mortgage loan, or to make, or to be a party to, a loan for such a refinancing. WHEDA would have to determine that: (1) an applicant made a reasonable effort to refinance his or her existing mortgage loan with the existing lender or loan servicer, or with another WHEDA-approved organization; (2) the applicant was unable to secure refinancing of the existing mortgage loan; (3) the lender will not refinance the existing mortgage loan without an agreement from WHEDA; and (4) the applicant does not appear on the state lien docket for delinquent child-support payments, or the applicant presents an approved payment agreement.

While WHEDA would have broad authority under the act, administration officials indicate the Authority may use the GPR allocation to establish a loan-loss reserve fund to encourage lenders to refinance mortgage loans on terms more favorable to distressed borrowers. A loan-loss reserve fund would compensate lenders for losses realized if refinanced mortgage loans go into foreclosure. Lenders would make claims from the loan-loss reserve fund following resale of the foreclosed property and the settlement of any other claims against a borrower.

Under current law, WHEDA has authority to make homeownership mortgage loans to low- and moderate-income applicants who are generally first-time homebuyers for the construction, long-term financing or qualified rehabilitation of eligible properties. Eligible properties include single-family dwellings, duplexes, three- or four-unit residential structures at least five years old or condominium units, and a property must be the principal residence of an applicant. Homeownership mortgage loans currently may not finance the acquisition or replacement of an applicant's existing mortgage.

[Act 2 Sections: 7, 15, 762, 765, and 779]

BOARD OF COMMISSIONERS OF PUBLIC LANDS

1. BOARD OF COMMISSIONERS OF PUBLIC LANDS LOAN PROGRAM

Make the following changes to the loan program administered by the Board of Commissioners of Public Lands (BCPL) related to loan repayment, county loan purposes, and loans to school districts of 10 years or less:

Provide that any borrower, after January 1 and prior to September 1 of any year may repay one or more installments of a state trust fund loan in advance of the due date, and that all interest upon the advance payment then terminates. Under current law, the repayment must occur after March 15 and before August 1.

In addition, require the treasurer of each municipality, each school district treasurer, and the public library system board to transmit directly to BCPL the amount due for state trust fund loans. Under current law, trust fund loan payments from municipalities and school districts are made to the Secretary of Administration and payments from the public library system are made to the State Treasurer, and the Secretary of Administration and the State Treasurer notify BCPL that the payments were received.

Specify that, in addition to the purposes under current law, BCPL may make a loan to a county if the governing body of the county demonstrates to the board's satisfaction that the debt is issued by a county having a population of 500,000 or more to pay unfunded prior service liability with respect to an employee retirement system. In addition, the act specifies that a county may issue debt for the purpose of acquiring or installing energy efficient equipment and that BCPL may make a loan to a county for that purpose.

In addition, the act is intended to clarify the conditions for approval of short-term loan applications (loans with a term of 10 years or less) from BCPL to school districts. Under current law, chapter 24 refers to "the procedure" in section 67.12(12) for the approval of short-term loans to school districts. The act eliminates this cross-reference, and move the language from subsection (e) of section 67.12(12), which contains the procedural language, to chapter 24 (the chapter which refers to BCPL loan authority). In addition, the bill removes the distinction between the approval process for loans of less than or equal to $5,000 and loans in excess of $5,000 (BCPL officials indicate loans of less than $5,000 are not made).

[Act 2 Sections: 20 thru 28 and 72]

COMMERCE

1. WISCONSIN DEVELOPMENT FUND INCREASED FUNDING FOR SPECIFIED GRANTS

	2008-09
GPR	$2,630,000

Provide the Wisconsin Development Fund $2,630,000 GPR in 2008-09. From the amount provided, the Department would be required to award $1,000,000 in grant moneys in 2008-09 to the Wisconsin Regional Training Partnership/Building Industry Group Skilled Trades Employment Program, to expand the program. As a condition of receiving the award, the recipient would be required to enter into a contract with Commerce that specifies permissible uses of the grant moneys, and that requires the partnership to comply with current law reporting and accountability measures related to reports, verified statements, and recouping and withholding payments.

In addition, the Department would be required to award a total of $1,630,000 in grants in

2008-09 to organizations in specific building trades for green job training and retraining as follows:

a. A grant of $150,000 to the Painters and Allied Trades, District Council 7, to train workers in the construction industry on the Leadership in Energy and Efficiency Design certification process, so that workers will understand green building practices, principles, and certification requirements, and be qualified to bid on green building projects.

b. A grant of $175,000 to the Painters and Allied Trades, District Council 7, to certify individuals to provide instruction to workers in the construction industry on standards established by the National Association of Corrosion Engineers, International, and by the Society for Protective Coatings, so that workers are trained for remediation services such as lead paint abatement on bridges and overpasses.

c. A grant of $175,000 to the Wisconsin State Council of Carpenters to train carpenters in the installation of windmills and other alternative energy systems.

d. A grant of $72,000 to the Wisconsin State Council of Carpenters to train carpenters in sustainable green building practices.

e. A grant of $248,000 to the Wisconsin Pipe Trades Association, Local 75, to build, using green building practices, a mobile training facility to be used in connection with training programs for workers in the pipe trades. The training programs would be required to be provided across the state, and provide training on new building codes, environmentally sound construction practices, and new initiatives for green construction.

f. A total grant of $265,000 to the Wisconsin Laborers' District Council to be used as follows: (1) a grant of $132,000 to provide safety instruction, under guidelines established by the Occupational Safety and Health Administration in the U. S. Department of Labor, to new workers hired to meet labor demand for incoming federal stimulus or other projects; (2) a grant of $80,000 to provide training to workers on proper handling of hazardous wastes while conducting site reclamation on brownfields projects; and (3) a grant of $53,000 to provide training on proper methods for removing asbestos to workers hired to meet labor demands for incoming federal stimulus or other projects.

g. A grant of $275,000 to the Wisconsin Operating Engineers to train workers in the construction of geothermal energy and wind energy systems.

h. A total grant of $270,000 to the International Brotherhood of Electrical Workers to be used as follows; (1) a grant of $210,000 to purchase equipment for three laboratories to be established in the state for training workers in the installation of solar electricity systems; and (2) a grant of $60,000 for instructor training and start-up costs in connection with the laboratories.

In order to be awarded a grant, the labor organization, as a condition of receiving the grant moneys, would be required to enter into a contract with Commerce that specifies permissible uses of the grant moneys, and that requires the partnership to comply with current law reporting and accountability measures related to reports, verified statements, and recouping and withholding payments.

WDF awards are made using general grant and loan criteria, or through the Wisconsin trade project, and the technology commercialization grant and loan program. Commerce is authorized to make grants or loans for eligible activities. Activities eligible for awards include: (a) capital financing; (b) worker training: (c); entrepreneurial development; (d) providing assistance to technology-based business or to businesses at a foreign trade show or event; (e) promoting urban or regional economic development; (f) establishing revolving loan funds; (g) providing working capital; and (h) promoting employee ownership by conducting or implementing feasibility studies to investigate the reorganization or new incorporation of existing businesses as employee-owned businesses. The Wisconsin trade project program provides grants to small- to medium-sized businesses to attend international trade shows. The technology commercialization grant and loan program provides funding for various stages of business venture development and for an entrepreneurial and technology transfer center. WDF grants and loans can provide up to 75% of project costs, depending on the program. The WDF is funded through a general purpose revenue (GPR) and a program revenue (PR) repayments appropriation. Annual base level funding for the WDF is $7,098,400 GPR and $4,050,000 PR.

[Act 2 Sections: 8, 9110(2)&(3), and 9210(2)&(3)]

HEALTH SERVICES

1. HOSPITAL ASSESSMENT AND MA RATE INCREASE

	2008-09	2009-11
SEG-REV	$275,445,100	$649,716,800
GPR	- $78,456,800	- $223,584,600
FED	282,197,500	634,385,500
SEG	275,445,100	649,716,800

Create an assessment on the gross patient revenues of eligible hospitals, and authorize the Department of Health Services (DHS) to use the assessment revenues to fund the state's share of the cost of increasing medical assistance (MA) payments for inpatient and outpatient hospital services, to generate federal matching funds on the increased payments to hospitals, to make additional state-only supplemental payments to hospitals, and to use a portion of the revenues generated by the hospital assessment to replace base GPR funding for MA benefits. Authorize DHS to assess hospitals $275,445,100 in 2008-09.

Hospital Assessment

Impose on each eligible hospital, beginning in 2008-09, an annual assessment equal to a uniform percentage, as determined by DHS, of the hospital's gross patient revenues. Define an "eligible hospital" to mean a hospital that is not a critical access hospital, an institution for mental diseases, or a general psychiatric hospital for which DHS has issued a certificate of approval that applies only to the psychiatric hospital and that is not a satellite of an acute care hospital.

Create the hospital assessment fund, a separate nonlapsible trust fund into which revenue from the hospital assessment would be deposited. Create an annual appropriation from the hospital assessment fund to support several types of payments authorized in the act, including payments to hospitals, payments to health maintenance organizations (HMOs), and transfers to the MA trust fund. In 2008-09, provide $275,445,100 SEG to support payments from the appropriation. Provide that the total amount of hospital assessments collected in a fiscal year must be equal to the amount budgeted in the new appropriation.

For fiscal year 2008-09, require each eligible hospital to pay its annual assessment in two equal amounts, with the first payment due by March 31, 2009, and the second payment due by June 30, 2009. For fiscal years after 2008-09, require each eligible hospital to pay its annual assessment in four equal amounts that are due September 30, December 31, March 31, and June 30 of each year. Authorize DHS, at its discretion, to allow a hospital that is unable to timely make a required assessment payment to make a delayed payment.

Payments to Hospitals and HMOs from the Hospital Assessment Fund

Increase MA Reimbursement Rates to Hospitals. Beginning in fiscal year 2008-09, authorize DHS to use funds from the hospital assessment fund to reimburse eligible hospitals for services provided under the state's MA program, and to make payments to HMOs with which DHS contracts to provide MA. For fiscal year 2008-09, specify that the total payments to hospitals and HMOs, including both the federal and state share of MA, must equal the total assessments collected in 2008-09 ($275,445,100), divided by 57.75%. For fiscal years after 2008-09, specify that the total amount of payments to hospitals and HMOs including both the federal and state share of MA, must equal the total assessments DHS collects (as determined by the amount budgeted in the new SEG appropriation), divided by 61.68%.

For 2008-09, it is estimated that the increased payments to hospitals will total $476.9 million ($195.8 million of hospital assessment revenues and $281.1 million FED).

Payments to hospitals for services that are reimbursed on a fee-for-service basis would first apply to services provided on July 1, 2008. Regarding the payments DHS would be required to make to HMOs, direct DHS to pay each HMO a monthly amount. Require each HMO to pay all of the money it receives from DHS for this purpose to eligible hospitals based on the number of discharges from inpatient stays and the number of outpatient visits for the which the HMO paid hospitals in the previous month for enrollees who are MA recipients, except enrollees in the MA childless adults program. Direct DHS to specify this allocation methodology in its contracts with HMOs.

Supplement Payments to Rural Hospitals. Authorize DHS to provide supplemental funds of not more than $5,000,000 each fiscal year, beginning in 2009-10, to rural hospitals that DHS determines have high utilization of inpatient services by patients whose care is provided from governmental sources. Under current law, DHS is authorized to distribute not more than $2,256,000 each fiscal year from its GPR and FED MA benefits appropriations, and from the MA trust fund, to such rural hospitals and to critical access hospitals. Beginning in 2009-10, increase the maximum annual distribution from $2,256,000 to $5,000,000, delete the reference to critical access hospitals, and authorize DHS to make these supplemental payments from the hospital assessment fund as well as from the Department's GPR and FED MA benefits appropriations and the MA trust fund.

Supplemental Payments to Level I Adult Trauma Centers. Authorize DHS to distribute from the hospital assessment fund and from its FED MA benefits appropriation, not more than $8,000,000 each fiscal year, beginning in 2009-10, as supplemental payments to hospitals that satisfy the criteria established by the American College of Surgeons for classification as a Level I adult trauma center, subject to the limitation that such supplemental payments not exceed federal limitations based on customary charges.

Pay-For-Performance Payments to Hospitals. Authorize DHS to make supplemental payments from the hospital assessment fund, beginning in 2009-10, to hospitals based on hospital performance, in accordance with a payment methodology developed by DHS, subject to the limitation that such supplemental payments not exceed federal limitations based on customary charges.

Other Payments to Hospitals

Supplemental Payments to UW Hospital and Clinics. Require DHS to distribute $3,000,000 each fiscal year, beginning in 2009-10, from the MA trust fund to the University of Wisconsin Hospital and Clinics for care that is not otherwise compensated, subject to the limitation that such distributions not exceed federal limitations on customary charges.

Supplemental Payments to Certain Rural Hospitals. Require DHS, in 2008-09 only, to pay from its GPR and FED MA benefits appropriations, to independent, rural hospitals that are in counties that border another state and that are not critical access hospitals, one of the following amounts: (a) if the percentage of the hospital's gross patient revenue attributable to the Wisconsin MA program is less than 7%, $250,000; and (b) if the percentage of the hospital's gross patient revenue attributable to the Wisconsin MA program is equal to or more than 7%, $500,000.

Appropriation Transfers and Reconciliations

Each fiscal year, require the Secretary of the Department of Administration (DOA) to transfer from the hospital assessment fund to the MA trust fund an amount equal to hospital assessments collected that fiscal year, minus the state share of the increased MA reimbursement rates paid to eligible hospitals under the act, and minus any refunds paid to hospitals from the hospital assessment fund that fiscal year. For fiscal year 2008-09, the amount of that transfer is projected to be $79,604,800. From that transferred amount, the DOA Secretary would be required, on June 30 of each fiscal year, to transfer 0.5% to a DHS appropriation to support administrative costs of the hospital assessment. The balance of the funds transferred to the MA trust fund would be used to make the $3,000,000 supplemental payment to UW Hospital and Clinics (beginning in 2009-10) and to replace GPR funding for MA benefits.

On June 30 of each state fiscal year, require DHS to refund to hospitals from the hospital assessment fund appropriation, the difference between that appropriation's authorized amount and the amount expended or encumbered from that appropriation in that fiscal year. Direct DHS to allocate any such refunds to hospitals in proportion to the percentage of the total hospital assessments collected that each hospital paid. However, for 2008-09, DHS would be required to make the required refunds by December 31, 2009.

Notwithstanding state law otherwise pertaining to annual appropriations, provide that the unencumbered balance in the hospital assessment fund appropriation may not revert to the hospital assessment fund at the end of state fiscal year 2008-09. Instead, authorize DHS to expend any such unencumbered balance in state fiscal year 2009-10, in addition to the amount authorized for that appropriation for fiscal year 2009-10.

Provide that if the federal government does not provide federal MA matching funds for hospital assessments used to make payments or used to make transfers as specified under the act, DHS would be required to refund hospitals from the fund from which the payment or transfer was made the amount for which the federal government does not provide federal matching funds. In the event DHS makes such a refund, require DHS to recoup the part of the payment for which the federal government does not provide federal financial participation and deposit such recouped funds either in the hospital assessment fund or the MA trust fund, as appropriate.

The following table summarizes the estimated revenues from the hospital assessment and federal match, and expenditures discussed above.

Hospital Assessment Proposal -- Summary of Estimated Fiscal Effect
Fiscal Years 2008-09 through 2010-11

	2008-09	2009-10	2010-11
Hospital Assessment Revenue	$275,445,100	$310,021,000	$339,695,800
Use of Assessment Revenue			
Rate Increase to Hospitals	$195,840,300	$197,793,600	$214,704,800
Level I Trauma Centers	0	3,200,000	3,165,600
UW Hospital and Clinics	0	3,000,000	3,000,000
Rural Hospitals	0	57,600	57,000
Administrative Costs	398,000	544,800	608,800
Replace GPR*	79,206,800	105,425,000	118,159,600
Total	$275,445,100	$310,021,000	$339,695,800
Federal Matching Revenue			
Rate Increase to Hospitals	$281,120,900	$296,690,500	$327,890,200
Level I Trauma Centers	0	4,800,000	4,834,400
Rural Hospitals	0	86,400	87,000
Total	$281,120,900	$301,576,900	$332,811,600
Total Revenues (Hospital Assessment and Federal)	$556,566,000	$611,597,900	$672,507,400

*Does not reflect payment of $1,826,600 ($750,000 GPR, $1,076,600 FED) to rural border hospitals in 2008-09. Including that payment, net GPR replacement in 2008-09 is $78,456,800, and net fiscal effect is $558,392,600.

HMO Reporting Requirements and Related Provisions

Require each HMO to report monthly to DHS the amount it paid each hospital, as required under the act, and the percentage of the total payments it paid each hospital. In addition, require each HMO to report monthly to each hospital to which it makes such payments the information DHS specifies in its contract with the HMO.

Authorize DHS to audit an HMO in order to determine whether the HMO has satisfied its requirements under the act. If DHS determines that an HMO has not complied with those requirements, require DHS to order the HMO to so comply within 15 days, and authorize DHS to terminate its contract with that HMO if its fails to comply.

Require DHS, in its contracts with HMOs, to specify the method for adjusting payments to correct an HMO's inaccurate counting of inpatient discharges or outpatient visits in calculating a monthly payment to a hospital. In the event an HMO and a hospital do not agree on the amount of money the HMO is required to pay the hospital, allow either the HMO or the hospital, within six months after the first day of the month in which the payment is due, to ask DHS to determine the amount of the payment. Require DHS to determine that amount within

60 days after any such request is made. Entitle the HMO or the hospital to a contested case hearing under Chapter 227 of the statutes on the Department's determination.

DHS Reporting Requirements

Require DHS, by January 1 of each fiscal year, to report to the Joint Committee on Finance all of the following for the state fiscal year ending the previous June 30: (a) the amount each eligible hospital paid in hospital assessments; (b) the amounts DHS paid to each HMO as required under the act; (c) the total amounts that each eligible hospital received from HMOs under the act; (d) the total amount of payment increases DHS made, in connection with implementation of the hospital assessment, for inpatient and outpatient hospital services that are reimbursed on a fee-for-service basis; (e) the total amount of payments DHS made to each hospital under the state's MA program; (f) the portion of capitated payments DHS made to each HMO under the state's MA program from GPR appropriation accounts that is for inpatient and outpatient hospital services; and (g) the results of any audits DHS conducted under the act and any actions taken by DHS as a result of those audits.

Other Statutory Provisions

Repeal, effective July 1, 2009, the current hospital assessment that requires hospitals, in the aggregate, to make hospital assessment payments to DHS of $1,500,000 each fiscal year.

Repeal, effective July 1, 2009, the current requirement that DHS notify the Governor, the Joint Committee on Finance, and appropriate standing committees of each house if the GPR appropriation amount for the state share of MA benefits, and the PR appropriation amount for the current hospital assessment (to be repealed effective July 1, 2009), are insufficient to provide the state share of MA benefits.

Repeal a current provision that limits MA reimbursement or payment for outpatient hospital services to the reimbursement or payment for comparable services performed by providers not owned or operated by hospitals.

Modify current law to permit, rather than require, DHS to provide supplemental payment to hospitals that enter into a contract to provide health care services funded by a relief block grant, as determined by DHS, for certain hospital services.

Specify that the term "health care coverage revenue" as used for purposes of establishing participating insurers' share of costs to administer the Health Insurance Risk-Sharing Plan, does not include the payments DHS makes to HMOs under the act.

[Act 2 Sections: 6, 11 thru 14, 29 thru 32, 34 thru 40, 46, 47, 49 thru 66, 69, 70, 556, 557, 9122(1), 9222(1)&(2), 9322(1), and 9422(1)]

2. SINGLE CERTIFICATE OF APPROVAL FOR UW HOSPITALS AND CLINICS AUTHORITY

Require DHS to issue a single certificate of approval to the University of Wisconsin Hospitals and Clinics Authority (UWHCA) that applies to all of the Authority's inpatient and outpatient hospital facilities that meet the requirements established by DHS and for which the Authority requests approval. Under current law, to operate as a hospital in Wisconsin and to receive reimbursements through the state's MA program, a hospital must first obtain a certificate of approval issued by DHS. In addition, current policy treats hospital-affiliated outpatient facilities located outside of a certain vicinity as a clinic, subject to separate MA reimbursement rates. This provision would exempt UWHCA inpatient and outpatient hospital facilities from being treated as clinics.

[Act 2 Sections: 48 and 68]

3. MEDICAL ASSISTANCE -- PARTIALLY ADDRESS PROJECTED 2008-09 SHORTFALL

	2008-09
GPR	$50,000,000
FED	71,773,000

Provide $121,773,000 ($50,000,000 GPR and $71,773,000 FED) in 2008-09 to partially address a projected shortfall in medical assistance (MA) benefits funding in 2008-09.

It is estimated that the costs of funding the state's share of medical assistance (MA) and BadgerCare Plus benefits in 2008-09 will exceed amounts available for these programs by $64.2 million. The current projected state-funded shortfall consists of (a) an increase in projected benefits costs for MA, compared with Act 20 estimates ($53.5 million); and (b) Act 20 and 226 lapse requirements assigned to these programs ($79.5 million) by the Department of Administration. These increased commitments for MA programs are partially offset by: (a) the Department's plans to request legislative authority to fully expend all projected uncommitted revenue in the MA trust fund ($46.8 million); and (b) the administration's current plans to delay certain payments that DHS had previously planned to make in 2008-09 ($22.0 million).

This item would reduce the projected state shortfall in the MA benefits funding in the 2008-09 biennium to approximately $14.2 million, which the administration indicates will be addressed as part of the Governor's 2009-11 biennial budget bill.

[Act 2 Section: 9222(3)]

BUDGET MANAGEMENT

1. DOA SECRETARY AUTHORITY TO LAPSE OR TRANSFER FUNDS TO THE GENERAL FUND

	2008-09	2009-11
GPR-REV	$38,044,400	$86,955,600

Require the Secretary of the Department of Administration (DOA) to lapse or transfer $125 million before July 1, 2011, from the unencumbered balances of appropriations to executive branch state agencies, other than sum sufficient and federal appropriations. Define executive branch state agencies as any office, department, or independent agency in the executive branch, excluding the Investment Board and the Department of Employee Trust Funds. Specify that this $125 million lapse or transfer requirement would be in addition to the $226 million lapse or transfer requirement under the provisions of 2007 Act 20.

Specify that the DOA Secretary could not lapse or transfer moneys if the lapse or transfer would: (a) violate a condition imposed by the federal government on the expenditure of the moneys; or (b) violate the federal or state constitution. Provide that the DOA Secretary could not lapse or transfer moneys from the Department of Transportation's SEG appropriations for the major highway development, state highway rehabilitation, and southeast Wisconsin freeway rehabilitation programs, except that the Secretary could lapse or transfer such moneys if they are provided for either DOT's operations or for engineering, consulting, surveying, or other specialized services.

Require the Co-chairs of the Joint Committee on Legislative Organization to ensure that before July 1, 2011, $500,000 from GPR appropriations to the Legislature is: (a) lapsed from sum certain appropriations; (b) subtracted from the expenditure estimates of sum sufficient appropriations; or (c) some combination of (a) and (b). Specify that this $500,000 would count towards the $125 million lapse total.

A letter from the Governor dated February 11, 2009, indicates that $38 million of the $125 million would accrue in 2008-09, with the remaining $87 million being realized in the 2009-11 biennium.

[Act 2 Section: 9201(1)]

2. GENERAL FUND RESERVE AND STRUCTURAL BALANCE REQUIREMENTS

General Fund Reserve. Provide that the general fund balance requirement of $65 million for 2008-09 would not apply in 2008-09. Under current law, no bill directly or indirectly affecting GPR may be enacted by the Legislature, if the bill would cause the estimated general fund balance to be less than a required amount, which is $65 million in 2008-09. This provision would eliminate this requirement for 2008-09.

Structural Balance Requirement. Specify that the current law general fund structural balance requirement would not apply to 2008-09. Under current law, no bill may be adopted by the Legislature if the bill would cause total general fund expenditures, less any amount transferred to the budget stabilization fund, to exceed the sum of general fund taxes and departmental revenues in any fiscal year. This provision would eliminate this requirement for 2008-09.

[Act 2 Section: 9131(2)]

3. LEGISLATIVE OVERSIGHT OF FEDERAL ECONOMIC STIMULUS FUNDS

Define federal economic stimulus funds as federal moneys received by the state beginning on the effective date of the bill and ending on June 30, 2011, pursuant to federal legislation enacted by the 111th Congress for the purpose of reviving the economy of the United States.

Specify the following relative to the expenditure of federal economic stimulus funds:

Joint Finance Review of Expenditure Plan. As soon as practical after the receipt of any federal economic stimulus funds, the Governor would be required to submit to the Joint Committee on Finance (JFC) a plan or plans for the expenditure of such funds for transportation purposes and a plan or plans for all purposes other than transportation purposes. After receiving the plan or plans, the Co-chairs of the Committee would be required to convene a meeting of JFC within 14 days to either approve, or modify and approve, the plan. In this case, the Governor would be required to implement the plan as approved by the Committee. This provision would not apply to federal stimulus funds if the expenditure of such funds is contained in any bill introduced in either house of the Legislature at the request of the Governor, nor to the funding for specific transportation projects listed in this act.

Require that all materials prepared for JFC by DOA and the Legislative Fiscal Bureau (LFB) relating to the expenditure of federal economic stimulus funds under a plan or plans submitted by the Governor be provided to members of JFC and posted on the LFB website at least 48 hours prior to the start of the meeting of JFC.

Revised Expenditure Plans. If, for any reason, a project included could not be completed on a timely basis, or if federal stimulus funds could not be expended as proposed in an approved expenditure plan, the Governor would be required to submit a revised plan to the Co-chairs of JFC. This provision would apply to the plans for the expenditure of federal economic stimulus funds for both transportation purposes and purposes other than transportation. This second plan could only be implemented if approved by JFC using the same procedure as the original plan.

Any economic stimulus expenditure plan, or revision to that plan, that is required to be submitted to JFC would be subject to the current law process under s. 13.10 of the statutes. Therefore, if the Committee meets on the plan, the Committee's final actions would be subject to the Governor's line item veto and potential Committee override.

Building Program Enumeration Exemption. Specify that any state project, regardless of cost, that exclusively involves the use of federal economic stimulus funds would not have to be enumerated as part of an authorized state building program. This exclusion from the enumeration requirement would apply to projects approved as part of the expenditure plan for purposes other than transportation for the design and construction of any state building, structure, or facility, for the state acquisition of land, or for the repair, remodeling, or improvement to any existing state building, structure, or facility.

As a result, any state project exclusively funded with federal stimulus funds and included as part of the expenditure plan approved by JFC, under the process described earlier, could be carried out without having to be enumerated as part of a state building program. The Building Commission would have the authority to carry out the implementation of any state project approved by JFC. Any project partially funded with federal stimulus funds would be subject to the current law enumeration requirement.

[Act 2 Section: 9131(1)]

WISCONSIN TECHNICAL COLLEGE SYSTEM

1. TRAINING PROGRAM GRANTS

	2008-09
GPR	$1,000,000

Provide $1,000,000 GPR in 2008-09 for training program grants, above budgeted funding of $3,000,000 for 2008-09. In addition, beginning in 2008-09, require the Wisconsin Technical College System (WTCS) Board to award at least $1,000,000 annually for advanced manufacturing skills training requested by businesses, with priority given to welding, under the current program for general business training grants.

Under current law, the WTCS Board is permitted to award grants to district boards for skills training or other education requested by businesses. Budgeted funding for the overall program was $2,000,000 GPR in 2007-08 and $3,000,000 GPR in 2008-09. Of these amounts, $1,500,000 in 2007-08 and $2,000,000 in 2008-09 was available for general business training grants. Remaining funds were required to be set aside for small business training grants, with more restrictive grant eligibility requirements, to provide training for employers having fewer than 100 employees or less than $10,000,000 in gross annual income in its most recent fiscal year.

[Act 2 Sections: 33 and 9248(1)]

WISCONSIN HEALTH AND EDUCATIONAL FACILITIES AUTHORITY

1. WHEFA BONDS FOR RESEARCH INSTITUTIONS

Provide that the Wisconsin Health and Educational Facilities Authority (WHEFA) may issue bonds to finance any project undertaken for a research facility by a participating research institution or to refinance outstanding debt of any participating research institution. Define "research facility" as an institution, place, building, or agency that satisfies the following: (a) is owned by an entity that is described in section 501(c)(3) of the Internal Revenue Code (IRC) and that is exempt from federal income tax under Section 501(a) of the IRC; and (b) is or will be used in whole or in part for basic research for the advancement of scientific, medical, or technological knowledge and that does not have a specific commercial purpose. Define "participating research institution" as an entity that provides or operates a research facility and that undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances. Projects that may be bonded for include a research facility or improvement to be refinanced, acquired, constructed, enlarged, remodeled, renovated, improved, furnished, or equipped or facilities or supporting service structures essential or convenient for the orderly conduct of the research facility.

Under this provision, statutory language controlling the issuance of bonds by WHEFA to finance certain projects undertaken by participating health and educational institutions or to refinance outstanding debt of those institutions would apply to bonds issued by WHEFA to finance research facility projects undertaken by any participating research institution or to refinance outstanding debt of any participating research institution.

[Act 2 Sections: 721 thru 757]

TRANSPORTATION

1. FEDERAL STIMULUS FUNDS FOR TRANSPORTATION

Specify that a current law procedure that requires the Department of Transportation to submit a plan to the Joint Committee on Finance for allocating any federal transportation aid received by the state in excess of a certain threshold does not apply to the first $300,000,000 received by the state for transportation purposes pursuant to federal legislation enacted during the 111th Congress for the purpose of reviving the economy of the United States.

Specify that the Department may encumber or expend the first $300,000,000 of federal economic stimulus funds received between the effective date of the act and June 30, 2011, only for one or more of 47 projects enumerated in the act, except if the Department had already encumbered other funds for any project in the list prior to receiving the federal funds, the Department may substitute a different project. The following table shows the list of 47 projects as they are enumerated in the act, with an estimate of the amount of one or more contracts associated with each listed highway segment or project name that the Department has indicated could be advanced with additional federal stimulus funds.

Highway or Project Name	County	Highway Number	Contract Amount ($ in Millions)
Odanah-Saxon	Ashland	USH 2	$3.2
Green Bay-Suamico	Brown	USH 41	0.4
Siren-Spooner	Burnett	STH 70	3.7
Sun Prairie bypass	Dane	USH 151	0.6
Madison-Milwaukee Road	Dane	I-94	40.2
Madison-Janesville Road	Dane	I-39	0.7
Madison-Janesville Road	Dane	I-90	0.4
New Richmond-Bloomer Road	Dunn	STH 64	2.1
Menomonie-Wheeler Road	Dunn	STH 25	2.6
Augusta-Fairchild Road	Eau Claire	USH 12	1.4
Kewaskum-Eden	Fond du Lac	USH 45	7.1
Maple Street Village of Palmyra	Jefferson	STH 59	1.8
Whitewater-Palmyra Road	Jefferson	STH 59	2.9
N-S Freeway, STH 50 to CTH C	Kenosha	I-94	4.2
N-S Freeway, CTH C to the state line	Kenosha	I-94	43.6
N-S Freeway, CTH C interchange	Kenosha	I-94	26.5
La Crosse-West Salem / Monegan	La Crosse	STH 16	0.7
Lily-Forest County line	Langlade	STH 52	1.2
Merrill-Tomahawk	Lincoln	USH 51	1.7
Meadow Lane bridge and approach	Manitowoc	Town Road	0.1
Mishicot-I-43	Manitowoc	STH 147	2.7
Manitowoc-Green Bay	Manitowoc	I-43	13.8
Mosinee-USH 45	Marathon	STH 153	1.4
Stevens Point-Wausau	Marathon	I-39	16.5
Suamico-Abrams	Oconto	USH 41	0.2
St. Croix Falls-Turtle Lake	Polk	USH 8	2.7
N-S Freeway, CTH G interchange	Racine	I-94	23.2
Footville-Janesville bypass	Rock	STH 11	3.0
Lake Delton-I-90 Road	Sauk	USH 12	3.2
Ghost Lake-Clam Lake Road	Sawyer	STH 77	3.2
Port Washington-Manitowoc	Sheboygan	I-43	15.9
Milwaukee-Green Bay Road	Sheboygan	I-43	7.8
New Richmond-Connorsville	St. Croix	STH 64	5.2
Medford-Goodrich	Taylor	STH 64	3.4
Viroqua-La Farge	Vernon	STH 82	1.0

Highway or Project Name	County	Highway Number	Contract Amount ($ in Millions)
Eagle River-Land o' Lakes	Vilas	USH 45	$7.1
USH 12	Walworth	USH 12	4.0
Rock Freeway	Walworth	I-43	3.0
Kewaskum-Eden	Washington	USH 45	0.5
Fulton Street and Hillcrest Drive intersection	Waupaca	STH 49	0.2
Winchester-New London	Waupaca	USH 45	0.7
Witzel Avenue overpass	Winnebago	USH 41	9.6
Lake Butte des Morts Causeway	Winnebago	USH 41	15.2
Fountain Avenue-Snell Road overpass	Winnebago	USH 41	4.3
USH 45 and Fernau Avenue-Snell Road	Winnebago	USH 41	3.2
Pittsville-Marshfield	Wood	STH 13	0.7
Pittsville-Neillsville	Wood	STH 73	1.9
TOTAL			$298.7

[Act 2 Sections: 553 and 9150(1)]