



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4031/1

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2005 BILL

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Thanks,  
Laura

1 AN ACT *to repeal* 180.0825 (2) (a), 180.08

2 (b); *to renumber* 180.1105 (1) (c) and (d); *to renumber and amend* 180.0602

3 (3); *to consolidate, renumber and amend* 180.0825 (2) (intro.) and (b); *to*

4 *amend* 179.02 (1), 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title),

5 180.0824 (3), 180.0825 (1), 180.1103 (1), 180.1106 (1) (b), 180.1130 (3) (a)

6 (intro.), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c), 180.1201 (title), 180.1201

7 (2), 180.1302 (4), 181.1106 (2), 181.1161 (4) (c), 183.1202 (1), 183.1205 (2) and

8 183.1207 (4) (c); *to repeal and recreate* 180.1130 (14); and *to create* 179.76

9 (5) (bm), 179.77 (5) (bm), 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5)

10 (am) and (bm), 180.11045, 180.1105 (1) (bm), (cm), (dm) and (e) to (h), 180.1161

11 (5) (bm), 180.1201 (1) (d), 180.1302 (1) (a) 3., 181.1105 (1m), 181.1161 (5) (bm),

12 183.1204 (1) (cm) and 183.1207 (5) (bm) of the statutes; **relating to:** mergers,

13 conversions, and other business combinations; the authority of the board<sup>s</sup> of

14 directors of business corporations and corporate committees; corporate  
merger and conversion reports for real estate transfer  
fee purposes;

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1 shareholder notices and meetings; the transfer of corporate property to certain  
2 affiliates; ~~and~~ naming limited partnerships; *and providing penalties*

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

This bill makes numerous changes to the laws governing business corporations. It also makes changes to the laws governing limited partnerships, nonstock corporations, and limited liability companies.

**BUSINESS CORPORATIONS*****Mergers with certain wholly owned subsidiaries***

Current law generally permits a business corporation organized under the laws of this state to reorganize as a holding company that owns the stock of one or more separately incorporated business operations. Under current law, such a reorganization may be accomplished through a transaction involving the original corporation (parent corporation), an entity created and owned by the original corporation (wholly owned subsidiary), and a third entity created and owned by the wholly owned subsidiary (indirect wholly owned subsidiary). Generally, the transaction culminates in the merger of the parent corporation with the indirect wholly owned subsidiary. The parent corporation survives the merger, and its shareholders trade their shares for shares in the wholly owned subsidiary. The wholly owned subsidiary, which owns all of the interests in the parent corporation, becomes the holding company.

With certain exceptions, current law permits a corporation to merge with or into another business entity only if, among other requirements, the corporation's shareholders approve a plan of merger adopted by the corporation's board of directors (board). With certain exceptions, this bill permits a parent corporation to merge with an indirect wholly owned subsidiary, including a corporation or limited liability company, without shareholder approval, if the following conditions are satisfied:

1. Every share in the parent corporation is converted into a share in the holding company, subject to the same rights and limitations that applied to the share prior to conversion.

2. The entity surviving the merger becomes a wholly owned subsidiary of the holding company.

3. The directors of the parent corporation become the directors of the holding company.

4. The provisions of the holding company's articles of incorporation and bylaws (or, if the holding company is a limited liability company, its operating agreement) are generally identical to those of the parent corporation's.

5. The provisions of the surviving entity's articles of incorporation and bylaws or operating agreement are generally identical to those of the parent corporation's.

6. If the surviving entity is a limited liability company, its operating agreement contains provisions that grant members certain rights enjoyed by shareholders of the parent corporation under current law or under the parent company's articles of incorporation or bylaws.

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7. The parent corporation's board determines that the merger will not result in any gain or loss for federal income tax purposes.

**Other changes related to mergers, share exchanges, and business combinations**

Currently, when a corporation approves a merger or share exchange, it must file articles of merger or share exchange with the Department of Financial Institutions (department). Among other things, the articles of merger or share exchange must include the plan of merger or share exchange. This bill deletes this requirement and, instead, requires the articles of merger to state that a plan of merger or share exchange has been approved and adopted as required by law, that the plan is on file at the principle place of business of the surviving corporation, and that the surviving corporation will provide a copy of the plan, upon request and without cost, to any shareholder or, upon payment of the cost of producing the copy, to any other interested person. The bill also specifies other information that must be included in the articles of merger or share exchange.

must be approved by

Currently, a corporation may not engage in a business combination (including certain mergers) unless a specified supermajority of shareholders vote to approve the combination. However, this requirement does not apply if the shareholders receive a price for their shares that satisfies a specified formula. One factor in applying this formula is to determine the valuation date of the shares. Currently, the valuation date is defined as the later of the day before the date on which the shareholders' vote concerning the combination or the day that is 20 days before the consummation of the combination. This bill specifies, instead, that the valuation date is the day before the first public announcement of the proposed business combination.

minimum

computed under

Current law restricts the ability of a corporation to engage in a business combination (including certain mergers) for three years following the "stock acquisition date," which is defined as the date on which any person first acquires at least 10% of the corporation's stock. Under this bill, the "stock acquisition date" is the time at which a person first acquires at least 10% of the corporation's stock.

redefines a component of the formula

With certain exceptions, the voting power of any person owning greater than 20% of a corporation's stock is currently limited to 10% of the full voting power of those shares, unless the articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This bill also permits the board of directors to specify that regular voting power will apply.

percent

Under current law, if a shareholder dissents from certain mergers, share exchanges, or other business combinations, the shareholder may obtain payment of the fair value of his or her shares. Under current law, a dissenting shareholder is entitled to receive fair value if either of the following apply: 1) the corporation that issued the stock held by the dissenting shareholder (issuing corporation) is a party to a merger for which shareholder approval is required under certain provisions in current law or under the issuing corporation's articles of incorporation; or 2) the corporation is a subsidiary corporation that is merging with a parent corporation.

Under the bill, a dissenting shareholder may also obtain fair value if the issuing corporation is a parent corporation that is merging with a subsidiary, unless the

corporation's

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merger satisfies certain conditions specified in the bill relating to the effect of the merger on the rights of shareholders.

Currently, the fair value is determined pursuant to several specified criteria. With limited exceptions, this bill provides an exemption from these dissenter's rights if the applicable shares are registered on a national securities exchange or quoted in the National Association of Securities Dealers, Inc. This exemption is identical to the exemption that applies generally to other dissenter's rights provisions.

***Classes or series of stock***

Under current law, a corporation's articles of incorporation may authorize the board to determine the relative rights of a class or series of shares of stock. Generally, the board may set the terms of a class or series without shareholder approval. The board may revise the terms by resolution, as long as no shares have been issued. The board may revise the terms of shares that have already been issued only by amendment to the articles of incorporation.

Under this bill, at any time after filing articles of amendment creating a class or series of shares, the board may: 1) decrease the number shares of ~~the~~ a class or series, but not below the number of outstanding shares of the class or series; 2) eliminate a class or series, if no shares of the class or series are outstanding; or 3) increase the number of shares of a class or series, but not beyond the number of shares authorized by the articles of incorporation.

***Shareholder notices and meetings***

Current law requires a corporation to notify shareholders of certain events and information. This bill exempts a corporation from all such notice requirements as to an individual shareholder if a specified number of notices or dividend payments sent to the shareholder are returned to the corporation as undeliverable. A shareholder may reinstate the notice requirements by delivering to the corporation the shareholder's current address.

***Transfer of property to certain affiliates and other changes related to business corporations***

Current law also prescribes the conditions under which a board may transfer the corporation's property. This bill permits a board to transfer the corporation's assets to other entities that are wholly owned by the corporation, except in connection with a plan that involves a transfer of all or substantially all of the corporation's assets and that requires shareholder approval.

This bill also permits a corporation to specify in its articles of incorporation or bylaws the rules for conducting shareholder meetings, and sets default rules for corporations that do not adopt their own rules. The bill also makes changes to current law regarding the formation and membership of a committee created by a board, and the bill deletes certain restrictions on the power of such committees. Further, the bill makes changes to current law relating to identifying a registered agent.

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**OTHER CHANGES**

Currently, the name of a limited partnership must contain the words "limited partnership" without abbreviation. This bill allows the name to include abbreviated versions of those words.

Under current law, when a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity (or when a business corporation enters into a share exchange), title to all personal property transfers, by operation of law, to the surviving entity. Title to real estate generally must be transferred by deed, which must be recorded in the appropriate office of the register of deeds. This bill deletes the requirement that a deed be executed and recorded. Under the bill, if a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity, the articles of merger or certificate of conversion filed with department must indicate whether a business entity that does not survive the merger or conversion has a fee simple ownership interest in real estate in this state.

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

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- 1           **SECTION 1.** 179.02 (1) of the statutes is amended to read:
- 2           179.02 (1) Shall contain, with or without abbreviation, the words "limited
- 3           partnership".
- 4           **SECTION 2.** 179.76 (4) (c) of the statutes is amended to read:
- 5           179.76 (4) (c) The business entity continues to be vested with title to all
- 6           property owned by the business entity that was converted without reversion or
- 7           impairment, ~~provided that, if the converting business entity has an interest in real~~
- 8           ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
- 9           ~~transfer that interest to the business entity surviving the conversion and shall~~
- 10          ~~execute any real estate transfer return required under s. 77.22. The business entity~~
- 11          ~~surviving the conversion shall promptly record the instrument of conveyance under~~
- 12          ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
- 13          ~~is located.~~
- 14          **SECTION 3.** 179.76 (5) (bm) of the statutes is created to read:

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1           179.76 (5) (bm) A statement indicating whether the business entity that is to  
2 be converted has a fee simple ownership interest in any Wisconsin real estate.

3           **SECTION 4.** 179.77 (5) (bm) of the statutes is created to read:

4           179.77 (5) (bm) A statement indicating whether a business entity merged with  
5 or into the surviving entity in the merger has a fee simple ownership interest in any  
6 Wisconsin real estate.

7           **SECTION 5.** 179.77 (6) (c) of the statutes is amended to read:

8           179.77 (6) (c) The title to all property owned by each business entity that is a  
9 party to the merger is vested in the surviving business entity without reversion or  
10 impairment, ~~provided that, if a merging business entity has an interest in real estate~~  
11 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~  
12 ~~that interest to the business entity surviving the merger and shall execute any real~~  
13 ~~estate transfer return required under s. 77.22. The business entity surviving the~~  
14 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~  
15 ~~office of the register of deeds for each county in which the real estate is located.~~

16           **SECTION 6.** 180.0502 (3) of the statutes is amended to read:

17           180.0502 (3) If the name of a registered agent changes or if the street address  
18 of his or her a registered agent's business office, he or she changes, the registered  
19 agent may change the name of the registered agent or street address of the registered  
20 office of any corporation for which he or, she, or it is the registered agent by notifying.  
21 To make a change under this subsection, the registered agent shall notify the  
22 corporation in writing of the change and by signing, either manually or in facsimile,  
23 and delivering deliver to the department for filing a signed statement that complies  
24 with sub. (2) and recites that the corporation has been notified of the change.

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1           **SECTION 7.** 180.0602 (3) of the statutes is renumbered 180.0602 (3) (a) and  
2 amended to read:

3           180.0602 (3) (a) After the articles of amendment are filed under sub. (2) and  
4 before the corporation issues any shares of the class or series that is the subject of  
5 the articles of amendment, the board of directors may alter or revoke any the  
6 distinguishing designation of the class or series and the preferences, limitations, or  
7 relative rights described in the articles of amendment, by adopting another  
8 resolution appropriate for that purpose. ~~The corporation shall file and filing~~ with the  
9 department revised articles of amendment that comply with sub. (2). ~~A~~ Except as  
10 provided in par. (b), a distinguishing designation, preference, limitation, or relative  
11 right may not be altered or revoked after the issuance of any shares of the class or  
12 series that are subject to the distinguishing designation, preference, limitation, or  
13 relative right, except by amendment of the articles of incorporation under s.  
14 180.1003.

15           **SECTION 8.** 180.0602 (3) (b) of the statutes is created to read:

16           180.0602 (3) (b) 1. Except as otherwise provided in this subdivision, after the  
17 articles of amendment are filed under sub. (2), the board of directors may decrease  
18 the number of shares of the class or series that is the subject of the articles of  
19 amendment by adopting another resolution appropriate for that purpose. The  
20 shares specified in the resolution shall resume the status applicable to them  
21 immediately before their inclusion in the class or series. The board of directors may  
22 not decrease the number of shares under this subdivision below the number of such  
23 shares that are outstanding.

24           2. After the articles of amendment are filed under sub. (2), if no shares of the  
25 class or series that is the subject of the articles of amendment are outstanding, the

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1 board of directors may eliminate from the articles of incorporation all matters set  
2 forth in the articles of amendment with respect to that class or series by adopting  
3 another resolution for that purpose. The board of directors shall prepare a certificate  
4 setting forth the content of any resolution under this subdivision, stating that none  
5 of the authorized shares of the class or series are outstanding, and stating that no  
6 such shares will be issued under the articles of amendment and shall deliver the  
7 signed certificate to the department for filing. A resolution under this subdivision  
8 takes effect upon filing of the certificate by the department and has the effect of  
9 eliminating from the articles of incorporation all matters set forth in the articles of  
10 amendment with respect to the applicable class or series.

11 3. Except as otherwise provided in this subdivision, after the articles of  
12 amendment are filed under sub. (2), the board of directors may increase the number  
13 of shares of the class or series that is the subject of the articles of amendment by  
14 adopting another resolution appropriate for that purpose. The board of directors  
15 may not increase the number of shares under this subdivision to be greater than the  
16 total number of authorized shares of the class or series as specified in the articles of  
17 incorporation.

18 **SECTION 9.** 180.0706 (title) of the statutes is amended to read:

19 **180.0706** (title) **Waiver of and exemption from notice.**

20 **SECTION 10.** 180.0706 (3) of the statutes is created to read:

21 180.0706 (3) (a) Except as provided in par. (b), any notice required to be given  
22 by a corporation to a shareholder under this chapter is not required to be given if any  
23 of the following applies:

24 1. Notice of 2 consecutive annual meetings, and all notices of meetings during  
25 the period between these annual meetings, have been sent to the shareholder at the

**BILL**

1 shareholder's address as shown on the records of the corporation and have been  
2 returned as undeliverable.

3 2. All, but not less than 2, payments of dividends on securities during a  
4 one-year period, or 2 consecutive payments of dividends on securities during a period  
5 of more than one year, have been sent to the shareholder at the shareholder's address  
6 as shown on the records of the corporation and have been returned as undeliverable.

7 (b) If a shareholder to whom par. (a) applies delivers to the corporation a  
8 written notice containing the shareholder's current address, then, beginning 30 days  
9 after receipt of the notice by the corporation, the requirement that notice be given  
10 to the shareholder is reinstated, until such time as par. (a) may again apply.

11 **SECTION 11.** 180.0708 of the statutes is created to read:

12 **180.0708 Conduct of meeting.** Unless the articles of incorporation or bylaws  
13 provide otherwise, every meeting of the shareholders shall be conducted as follows:

14 (1) A chairperson shall preside over the meeting. The chairperson shall be  
15 appointed by the board of directors.

16 (2) The chairperson shall determine the order of business and the time of  
17 adjournment and may establish rules for the conduct of the meeting which the  
18 chairperson believes are fair to the interests of all shareholders.

19 (3) The chairperson shall determine and announce at the meeting the time at  
20 which the polls will close for each matter voted upon at the meeting. The polls close  
21 at the announced time, except that, if no such announcement is made, the polls close  
22 upon final adjournment of the meeting. After the polls close, no ballots, proxies, or  
23 votes or revocations or changes to ballots, proxies, or votes may be accepted.

24 **SECTION 12.** 180.0824 (3) of the statutes is amended to read:

**BILL**

1           180.0824 (3) Except as provided in ss. 180.0825 (2) and (3), 180.0831 (4) and  
2           180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote  
3           of a majority of directors present is the act of the board of directors or a committee  
4           of the board of directors created under s. 180.0825, unless the articles of  
5           incorporation or bylaws require the vote of a greater number of directors.

6           **SECTION 13.** 180.0825 (1) of the statutes is amended to read:

7           180.0825 (1) Unless the articles of incorporation or bylaws provide otherwise,  
8           a board of directors may create one or more committees, appoint members of the  
9           board of directors to serve on the committees and designate other members of the  
10          board of directors to serve as alternates. Each committee shall have ~~2 or more~~  
11          members at least one member. Unless otherwise provided by the board of directors,  
12          members of the committee shall serve at the pleasure of the board of directors.

13          **SECTION 14.** 180.0825 (2) (intro.) and (b) of the statutes are consolidated,  
14          renumbered 180.0825 (2) and amended to read:

15          180.0825 (2) Except as provided in sub. (3), the creation of a committee,  
16          appointment of members to it, and designation of alternate members, if any, shall be  
17          approved by the ~~greater of the following: (b)~~ The number of directors required by the  
18          articles of incorporation or bylaws to take action under s. 180.0824 (3).

19          **SECTION 15.** 180.0825 (2) (a) of the statutes is repealed.

20          **SECTION 16.** 180.0825 (5) (a) to (h) of the statutes are repealed.

21          **SECTION 17.** 180.0825 (5) (am) and (bm) of the statutes are created to read:

22          180.0825 (5) (am) Approve or recommend to shareholders for approval any  
23          action or matter expressly required by this chapter to be submitted to shareholders  
24          for approval.

25          (bm) Adopt, amend, or repeal any bylaw of the corporation.

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1           **SECTION 18.** 180.1103 (1) of the statutes is amended to read:

2           180.1103 (1) **SUBMIT TO SHAREHOLDERS.** After adopting and approving a plan of  
3 merger or share exchange, the board of directors of each corporation that is party to  
4 the merger, and the board of directors of the corporation whose shares will be  
5 acquired in the share exchange, shall submit the plan of merger, except as provided  
6 in sub. (5) and s. 180.11045 (2), or share exchange for approval by its shareholders.

7           **SECTION 19.** 180.11045 of the statutes is created to read:

8           **180.11045 Merger of indirect wholly owned subsidiary or parent. (1)**  
9 **DEFINITIONS.** In this section:

10           (a) “Holding company” means a corporation that issues shares under sub. (2)  
11 (b) and that, during the period beginning with its incorporation and ending with the  
12 consummation of a merger under this section, was at all times a wholly owned  
13 subsidiary of the parent corporation that is party to the merger.

14           (b) “Indirect wholly owned subsidiary” means any of the following:

15           1. A corporation, all of the outstanding shares of each class of which are, prior  
16 to the consummation of a merger under this section, owned by a parent corporation  
17 indirectly through one or more business entities.

18           2. A limited liability company organized under ch. 183, all of the outstanding  
19 interests of each class of which are, prior to the consummation of a merger under this  
20 section, owned by a parent corporation indirectly through one or more business  
21 entities.

22           (c) “Organizational documents” means, when used in reference to a  
23 corporation, the corporation’s articles of incorporation and bylaws and, when used  
24 in reference to a limited liability company, the limited liability company’s operating  
25 agreement.

**BILL****SECTION 19**

1 (d) “Parent corporation” means a corporation owning, prior to the  
2 consummation of a merger under this section, all of the outstanding shares of each  
3 class of another corporation or all of the outstanding interests of each class of another  
4 business entity.

5 (e) “Surviving entity” means the limited liability company or corporation, other  
6 than the holding company, surviving a merger under sub. (2).

7 (f) “Wholly owned subsidiary” means any of the following:

8 1. A corporation, all of the outstanding shares of each class of which are owned  
9 by a corporation indirectly through one or more business entities or directly.

10 2. A limited liability company organized under ch. 183, all of the outstanding  
11 interests of each class of which are owned by a corporation indirectly through one or  
12 more business entities or directly.

13 **(2) MERGER AUTHORIZED.** Unless the articles of incorporation of the parent  
14 corporation specifically provide otherwise, or the parent corporation is a statutory  
15 close corporation under ss. 180.1801 to 180.1837, a parent corporation may merge  
16 with or into one of its indirect wholly owned subsidiaries pursuant to s. 180.1101  
17 without approval of the shareholders of the parent corporation or the shareholders  
18 or members of the indirect wholly owned subsidiary if all of the following conditions  
19 are satisfied:

20 (a) The parent corporation and the indirect wholly owned subsidiary are the  
21 only parties to the merger.

22 (b) Each share or other interest of the parent corporation outstanding  
23 immediately prior to the effective time of the merger is converted in the merger into  
24 a share or equal interest of a corporation that was a wholly owned subsidiary of the  
25 parent corporation immediately prior to the consummation of the merger having the

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1 same designation, preferences, limitations, and relative rights as the share or other  
2 interest of the parent corporation outstanding immediately prior to the effective time  
3 of the merger.

4 (c) Except as otherwise provided in this paragraph, immediately following the  
5 effective time of the merger, the organizational documents of the holding company  
6 issuing shares in the merger pursuant to sub. (2) (b) contain provisions identical to  
7 the organizational documents of the parent corporation immediately prior to the  
8 effective time of the merger. This requirement does not apply to provisions regarding  
9 the incorporator or incorporators, the corporate name, the registered office and  
10 agent, and provisions that are subject to amendment under s. 180.1002. To the  
11 extent that the 2nd sentence of s. 180.0852 applied to the parent corporation  
12 immediately prior to the effective time of the merger, the organizational documents  
13 of the holding company immediately following the effective time of the merger shall  
14 contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to  
15 the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective  
16 time of the merger, the articles of incorporation of the holding company immediately  
17 following the effective time of the merger shall contain provisions implementing s.  
18 180.1706 (2) and (3).

19 (d) Immediately following the effective time of the merger, the surviving entity  
20 is a wholly owned subsidiary of the holding company.

21 (e) The directors of the parent corporation immediately prior to the effective  
22 time of the merger are the directors of the holding company immediately following  
23 the effective time of the merger.

24 (f) Except as otherwise provided in this paragraph, the organizational  
25 documents of the surviving entity immediately following the effective time of the

**BILL****SECTION 19**

1 merger contain provisions identical to the organizational documents of the parent  
2 corporation immediately prior to the effective time of the merger. With respect to a  
3 surviving entity that is a corporation, this requirement does not apply to provisions  
4 regarding the incorporator or incorporators; the corporate name; the registered office  
5 and agent; or provisions that are subject to amendment under s. 180.1002 or any  
6 other law permitting amendment of the articles of incorporation without approval  
7 of the shareholders. With respect to a surviving entity that is a limited liability  
8 company, this requirement does not apply to provisions regarding the organizer or  
9 organizers; the entity name; the registered office and agent; references to members  
10 rather than shareholders; references to interests, units, or similar terms rather than  
11 shares; references to managers rather than directors; or provisions that are subject  
12 to amendment under any law permitting amendment of the operating agreement  
13 without approval of the members. The organizational documents of the surviving  
14 entity immediately following the effective time of the merger may specify a reduced  
15 number of classes and shares or other interests that the surviving entity is  
16 authorized to issue. To the extent that the 2nd sentence of s. 180.0852 applied to the  
17 parent corporation immediately prior to the effective time of the merger, the  
18 organizational documents of the surviving entity immediately following the effective  
19 time of the merger shall contain provisions implementing that sentence. If s.  
20 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1),  
21 immediately prior to the effective time of the merger, the organizational documents  
22 of the surviving entity immediately following the effective time of the merger shall  
23 contain provisions implementing s. 180.1706 (2) and (3). The organizational  
24 documents of the surviving entity immediately following the effective time of the

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1 merger shall contain provisions that specifically refer to this paragraph and that  
2 require all of the following:

3 1. Any act, other than the election or removal of directors or managers of the  
4 surviving entity, for which approval of the shareholders or members of the surviving  
5 entity is required under this chapter, ch. 183, or the surviving entity's organizational  
6 documents may be accomplished only with the additional approval of the  
7 shareholders of the holding company or any successor to the holding company, by the  
8 same vote as is required for approval of the shareholders or members of the surviving  
9 entity under this chapter, ch. 183, or the surviving entity's organizational  
10 documents.

11 2. If the surviving entity is a limited liability company, any act, other than the  
12 election or removal of managers of the surviving entity, for which approval of the  
13 shareholders of the surviving entity would be required under this chapter if the  
14 surviving entity were a corporation may be accomplished only with the additional  
15 approval of the shareholders of the holding company or any successor to the holding  
16 company, by the same vote as would be required for approval of the shareholders  
17 under this chapter if the surviving entity were a corporation.

18 3. If the surviving entity is a limited liability company, any amendment of the  
19 organizational documents of the surviving entity that would be required under this  
20 chapter to be included in the articles of incorporation of the surviving entity if the  
21 surviving entity were a corporation, other than an amendment specified in s.  
22 180.1002, may be accomplished only with the additional approval of the  
23 shareholders of the holding company or any successor to the holding company, by the  
24 same vote as would be required for approval of the shareholders under this chapter  
25 if the surviving entity were a corporation.

**BILL****SECTION 19**

1           4. If the surviving entity is a limited liability company, the affairs of the  
2 surviving entity are managed by or under the direction of a group of managers  
3 consisting of individuals who have the same fiduciary duties toward the surviving  
4 entity and its members as the directors of a corporation have toward the corporation  
5 and its shareholders and who are liable for breach of their duties to the same extent  
6 as directors of a corporation.

7           (g) In the opinion of the board of directors of the parent corporation, the  
8 shareholders of the parent corporation do not have a gain or loss under the Internal  
9 Revenue Code as a result of the merger.

10           **(3) ARTICLES OF MERGER.** The surviving entity shall include in the articles of  
11 merger under s. 180.1105 a statement that the merger was approved in accordance  
12 with this section and that the requirements of sub. (2) have been satisfied.

13           **(4) EFFECT OF MERGER.** All of the following occur when a merger under sub. (2)  
14 takes effect:

15           (a) To the extent that the restrictions of s. 180.1131, 180.1141, or 180.1150  
16 applied to the parent corporation and its shareholders immediately prior to the  
17 effective time of the merger, the restrictions apply to the holding company and its  
18 shareholders immediately following the effective time of the merger to the same  
19 extent as if the holding company were the parent corporation as the corporation  
20 existed immediately prior to the effective time of the merger. For purposes of ss.  
21 180.1130, 180.1132, 180.1141, 180.1142, 180.1143, and 180.1150, the shares of the  
22 holding company acquired in the merger are deemed to have been acquired at the  
23 time and for the price and form of consideration that the shares of the parent  
24 corporation that were converted in the merger were acquired.

**BILL**

1 (b) If immediately prior to the effective time of the merger s. 180.1141,  
2 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, the  
3 section does not apply to the shareholder as a shareholder of the holding company  
4 solely by reason of the merger.

5 (c) If the corporate name of the holding company immediately following the  
6 effective time of the merger is the same as the corporate name of the parent  
7 corporation immediately prior to the effective time of the merger, the shares of the  
8 holding company into which the shares of the parent corporation are converted in the  
9 merger are represented by the certificates that previously represented shares of the  
10 parent corporation.

11 (d) A shareholder of the parent corporation immediately prior to the effective  
12 time of the merger retains any right that the shareholder had immediately prior to  
13 the effective time of the merger to institute or maintain a derivative proceeding in  
14 the right of the parent corporation.

15 (e) No act of the surviving entity that requires the additional approval of the  
16 shareholders of the holding company or any successor company pursuant to sub. (2)  
17 (f) shall give rise to dissenters' rights under ss. 180.1301 to 180.1331 for the  
18 shareholders or the beneficial shareholders of the holding company or any successor  
19 to the holding company.

20 (f) To the extent that shares of the parent corporation immediately prior to the  
21 effective time of the merger constituted shares of a preexisting class, the shares of  
22 the holding company immediately following the effective time of the merger  
23 constitute shares of a preexisting class to the same extent as if the holding company  
24 were the parent corporation as the parent corporation existed immediately prior to  
25 the consummation of the merger. Shares or interests of the surviving entity do not

**BILL****SECTION 19**

1 constitute shares of a preexisting class for purposes of s. 180.1705. For purposes of  
2 s. 180.1707, to the extent that shares of the parent corporation immediately prior to  
3 the effective time of the merger constituted shares of a preexisting class, the shares  
4 or interests of the surviving entity constitute shares of a preexisting class to the same  
5 extent as if the surviving entity were the parent corporation as the parent  
6 corporation existed immediately prior to the consummation of the merger.

7 (g) To the extent that the provisions of s. 180.1706 (4) applied to the parent  
8 corporation immediately prior to the effective time of the merger, the provisions  
9 apply to the holding company immediately following the effective time of the merger  
10 to the same extent as if the holding company were the parent corporation as the  
11 corporation existed immediately prior to the consummation of the merger. To the  
12 extent that the provisions of s. 180.1706 (4) applied to the parent corporation  
13 immediately prior to the effective time of the merger, if the surviving entity is a  
14 corporation, the provisions apply to the surviving entity immediately following the  
15 effective time of the merger to the same extent as if the surviving entity were the  
16 parent corporation as the corporation existed immediately prior to the  
17 consummation of the merger. To the extent that the provisions of s. 180.1706(4)  
18 applied to the parent corporation immediately prior to the effective time of the  
19 merger, if the surviving entity is a limited liability company, the provisions apply to  
20 the corresponding provisions of the organizational documents of the surviving entity  
21 immediately following the effective time of the merger to the same extent as if the  
22 surviving entity were the parent corporation as the corporation existed immediately  
23 prior to the consummation of the merger.

24 (h) To the extent that immediately prior to the effective time of the merger  
25 shareholders of the parent corporation had rights or were subject to obligations or

**BILL**

1 restrictions of the types referred to in s. 180.0627 (2), 180.0630 (4), 180.0722 (2),  
2 180.0730 (1), or 180.0731 (1), the rights, obligations, or restrictions apply to the  
3 shareholders of the holding company immediately following the effective time of the  
4 merger to the same extent as if the holding company were the parent corporation as  
5 the corporation existed immediately prior to the consummation of the merger, unless  
6 the agreement, waiver, proxy, or trust establishing the rights, obligations, or  
7 restrictions specifies otherwise.

8 **SECTION 20.** 180.1105 (1) (a) and (b) of the statutes are repealed.

9 **SECTION 21.** 180.1105 (1) (bm), (cm), (dm) and (e) to (h) of the statutes are  
10 created to read:

11 180.1105 (1) (bm) The name and state of incorporation of each corporation that  
12 is a party to the merger or share exchange.

13 (cm) A statement that a plan of merger or share exchange has been approved  
14 and adopted by each corporation that is a party to the merger or share exchange as  
15 required under s. 180.1103 or 180.1104, as applicable.

16 (dm) The name of the surviving or acquiring corporation.

17 (e) In the case of a merger, any amendments in the articles of incorporation of  
18 the surviving corporation that are intended by the parties to the merger to take effect  
19 upon the merger or, if there are no such amendments, a statement that the articles  
20 of incorporation of the surviving corporation or another corporation that is a party  
21 to the merger will be the articles of incorporation of the surviving corporation.

22 (f) A statement that the executed plan of merger or share exchange is on file  
23 at the principal place of business of the surviving or acquiring corporation.

24 (g) A statement that the surviving or acquiring corporation will provide a copy  
25 of the plan of merger or share exchange, upon request and without cost, to any

**BILL**

1 shareholder of a corporation that was a party to the merger or share exchange or,  
2 upon payment to the surviving or acquiring corporation of an amount equal to the  
3 cost of producing the copy, to any other interested person.

4 (h) In the case of a merger, a statement indicating whether a business entity  
5 merged with or into the surviving entity in the merger has a fee simple ownership  
6 interest in any Wisconsin real estate.

7 **SECTION 22.** 180.1105 (1) (c) and (d) of the statutes are renumbered 180.1105  
8 (1) (am) and (i).

9 **SECTION 23.** 180.1106 (1) (b) of the statutes is amended to read:

10 180.1106 (1) (b) The title to all property owned by each business entity that is  
11 party to the merger is vested in the surviving business entity without reversion or  
12 impairment, ~~provided that, if a merging business entity has an interest in real estate~~  
13 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~  
14 ~~that interest to the business entity surviving the merger and shall execute any real~~  
15 ~~estate transfer return required under s. 77.22. The business entity surviving the~~  
16 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~  
17 ~~office of the register of deeds for each county in which the real estate is located.~~

18 **SECTION 24.** 180.1130 (3) (a) (intro.) of the statutes is amended to read:

19 180.1130 (3) (a) (intro.) Unless the merger or share exchange is subject to s.  
20 180.1104 or s. 180.11045, does not alter the contract rights of the shares as set forth  
21 in the articles of incorporation or does not change or convert in whole or in part the  
22 outstanding shares of the resident domestic corporation, a merger or share exchange  
23 of the resident domestic corporation or a subsidiary of the resident domestic  
24 corporation with any of the following:

25 **SECTION 25.** 180.1130 (14) of the statutes is repealed and recreated to read:

**BILL**

1           180.1130 (14) “Valuation date” means the time when the closing price of the  
2 stock is determined on the day before the first public announcement of the proposed  
3 business combination.

4           **SECTION 26.** 180.1140 (11) of the statutes is amended to read:

5           180.1140 (11) “Stock acquisition date”, with respect to any person, means the  
6 ~~date that~~ time when that person first becomes an interested stockholder of that  
7 resident domestic corporation.

8           **SECTION 27.** 180.1150 (2) of the statutes is amended to read:

9           180.1150 (2) Unless otherwise provided in the articles of incorporation of a  
10 resident domestic corporation or otherwise specified by the board of directors of the  
11 resident domestic corporation in accordance with s. 180.0824 (3), and except as  
12 provided in sub. (3) or as restored under sub. (5), the voting power of shares of a  
13 resident domestic corporation held by any person, including shares issuable upon  
14 conversion of convertible securities or upon exercise of options or warrants, in excess  
15 of 20% of the voting power in the election of directors shall be limited to 10% of the  
16 full voting power of those shares.

17           **SECTION 28.** 180.1161 (4) (c) of the statutes is amended to read:

18           180.1161 (4) (c) The business entity continues to be vested with title to all  
19 property owned by the business entity that was converted without reversion or  
20 impairment, ~~provided that, if the converting business entity has an interest in real~~  
21 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~  
22 ~~transfer that interest to the business entity surviving the conversion and shall~~  
23 ~~execute any real estate transfer return required under s. 77.22. The business entity~~  
24 ~~surviving the conversion shall promptly record the instrument of conveyance under~~

**BILL**

1 s. 59.43 in the office of the register of deeds for each county in which the real estate  
2 is located.

3 **SECTION 29.** 180.1161 (5) (bm) of the statutes is created to read:

4 180.1161 (5) (bm) A statement indicating whether the business entity that is  
5 to be converted has a fee simple ownership interest in any Wisconsin real estate.

6 **SECTION 30.** 180.1201 (title) of the statutes is amended to read:

7 **180.1201 (title) Sale of assets in regular course of business; mortgage**  
8 **of assets; transfer of assets to subsidiary.**

9 **SECTION 31.** 180.1201 (1) (d) of the statutes is created to read:

10 180.1201 (1) (d) Transfer any or all of its assets to one or more corporations or  
11 other entities, all of the shares or interests of which are owned by the corporation,  
12 unless the transfer is in connection with a plan or action involving the sale, exchange,  
13 or disposal of all or substantially all of the assets of the corporation and requires  
14 shareholder approval under s. 180.1202.

15 **SECTION 32.** 180.1201 (2) of the statutes is amended to read:

16 180.1201 (2) Unless required by the articles of incorporation, approval by the  
17 shareholders of a transaction ~~described~~ permitted in sub. (1) is not required.

18 **SECTION 33.** 180.1302 (1) (a) 3. of the statutes is created to read:

19 180.1302 (1) (a) 3. The issuer corporation is a parent that is merged into its  
20 subsidiary under s. 180.1104. This subdivision does not apply if all of the following  
21 are true:

22 a. The articles of incorporation of the surviving corporation do not differ from  
23 the articles of incorporation of the parent before the merger, except for amendments  
24 specified in s. 180.1002 (1) to (9).

**BILL**

1           b. Immediately after the merger, each shareholder of the parent whose shares  
2 were outstanding immediately before the effective date of the merger hold the same  
3 number of shares of the surviving corporation, and the shares of the surviving  
4 corporation have the same designations, preferences, limitations, and relative rights  
5 as the shares held immediately before the merger.

6           c. The number of voting shares, as defined in s. 180.1103 (5) (a) 2., outstanding  
7 immediately after the merger, plus the number of voting shares issuable as a result  
8 of the merger, either by the conversion of securities issued pursuant to the merger  
9 or the exercise of rights or warrants issued pursuant to the merger, do not exceed by  
10 more than 20 percent the total number of voting shares of the parent outstanding  
11 immediately before the merger.

12           d. The number of participating shares, as defined in s. 180.1103 (5) (a) 1.,  
13 outstanding immediately after the merger, plus the number of participating shares  
14 issuable as a result of the merger, either by the conversion of securities issued  
15 pursuant to the merger or the exercise of rights or warrants issued pursuant to the  
16 merger, do not exceed by more than 20 percent the total number of participating  
17 shares of the parent outstanding immediately before the merger.

18           **SECTION 34.** 180.1302 (4) of the statutes is amended to read:

19           180.1302 (4) ~~Except in a business combination or unless~~ Unless the articles of  
20 incorporation provide otherwise, subs. (1) and (2) do not apply to the holders of shares  
21 of any class or series if the shares of the class or series are registered on a national  
22 securities exchange or quoted on the National Association of Securities Dealers, Inc.,  
23 automated quotations system on the record date fixed to determine the shareholders  
24 entitled to notice of a shareholders meeting at which shareholders are to vote on the  
25 proposed corporate action.

**BILL**

1           **SECTION 35.** 181.1105 (1m) of the statutes is created to read:

2           181.1105 **(1m)** STATEMENT AS TO PROPERTY OWNED BY NONSURVIVING ENTITY. A  
3 statement indicating whether a business entity merged with or into the surviving  
4 entity in the merger has a fee simple ownership interest in any Wisconsin real estate.

5           **SECTION 36.** 181.1106 (2) of the statutes is amended to read:

6           181.1106 **(2)** TITLE TO PROPERTY. The title to all real estate and other property  
7 owned by each business entity that is a party to the merger is vested in the surviving  
8 business entity without reversion or impairment subject to any conditions to which  
9 the property was subject before the merger, ~~provided that, if a merging business~~  
10 ~~entity has an interest in real estate in Wisconsin on the date of the merger, the~~  
11 ~~merging business entity shall transfer that interest to the business entity surviving~~  
12 ~~the merger and shall execute any real estate transfer return required under s. 77.22.~~  
13 The business entity surviving the merger shall promptly record the instrument of  
14 conveyance under s. 59.43 in the office of the register of deeds for each county in  
15 which the real estate is located.

16           **SECTION 37.** 181.1161 (4) (c) of the statutes is amended to read:

17           181.1161 (4) (c) The business entity continues to be vested with title to all  
18 property owned by the business entity that was converted without reversion or  
19 impairment, ~~provided that, if the converting business entity has an interest in real~~  
20 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~  
21 ~~transfer that interest to the business entity surviving the conversion and shall~~  
22 ~~execute any real estate transfer return required under s. 77.22. The business entity~~  
23 ~~surviving the conversion shall promptly record the instrument of conveyance under~~  
24 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~  
25 ~~is located.~~

**BILL**

1           **SECTION 38.** 181.1161 (5) (bm) of the statutes is created to read:

2           181.1161 (5) (bm) A statement indicating whether the business entity that is  
3 to be converted has a fee simple ownership interest in any Wisconsin real estate.

4           **SECTION 39.** 183.1202 (1) of the statutes is amended to read:

5           183.1202 (1) Unless otherwise provided in an operating agreement and except  
6 as provided in s. 180.11045 (2), a limited liability company that is a party to a  
7 proposed merger shall approve the plan of merger by an affirmative vote of members  
8 as described in s. 183.0404 (1) (a). Unless otherwise provided in an operating  
9 agreement or waived by the members, a limited liability company may obtain the  
10 approving vote of its members only after providing the members with not less than  
11 10 nor more than 50 days' written notice of its intent to merge accompanied by the  
12 plan of merger.

13           **SECTION 40.** 183.1204 (1) (cm) of the statutes is created to read:

14           183.1204 (1) (cm) A statement indicating whether a business entity merged  
15 with or into the surviving entity in the merger has a fee simple ownership interest  
16 in any Wisconsin real estate.

17           **SECTION 41.** 183.1205 (2) of the statutes is amended to read:

18           183.1205 (2) The title to all property owned by each business entity that is a  
19 party to the merger is vested in the surviving business entity without reversion or  
20 impairment, ~~provided that, if a merging business entity has an interest in real estate~~  
21 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~  
22 ~~that interest to the business entity surviving the merger and shall execute any real~~  
23 ~~estate transfer return required under s. 77.22. The business entity surviving the~~  
24 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~  
25 ~~office of the register of deeds for each county in which the real estate is located.~~



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4031/1dn  
CTS:lmk:jf

*January 23, 2006*

*(new date)*

Representative McCormick:

Please review this draft carefully to ensure it is consistent with your intent.

Note that 2003 SB 218 appears to contain an error with respect to the treatment of current s. 180.1105 (1) (c) and (d), relating to requirements for articles of merger or share exchange for business corporations. For this reason, it was unclear how this draft should deal with these paragraphs. In this draft, I have assumed that you intended to retain these paragraphs. If you intend for the draft to repeal these paragraphs, the draft will have to be revised.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: christopher.sundberg@legis.state.wi.us

Insert A

Under current law, a conveyance of real property pursuant to a merger or business conversion is not subject to the real estate transfer fee. ✓ Under current law, the reason for a real estate transfer fee exemption must be specified on the conveyance at the time that the conveyance is recorded with the register of deeds of the county in which the real property is located. ✓ Under the bill, in order to claim the real estate transfer fee exemption for a conveyance of real property pursuant to a merger or business conversion, a certified copy of the document providing evidence of the merger or conversion must be submitted with the real estate transfer return. ✓ The bill also requires that the surviving entity of a merger or conversion file a report with the Department of Revenue (DOR) that specifies the effective date of the merger or conversion, the name and address of each business entity that is a party to the merger or conversion, the name of any person at the surviving entity that DOR may contact with regard to submitting the report and the information contained in the report, the parcel identification number and location of all real property interests owned by the surviving entity, a certified copy of the document providing evidence of the merger or conversion, and, in the case of a conversion, a sworn statement that the ownership interests in the surviving entity are identical with the ownership interests in the original entity immediately preceding the conversion. ✓

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

Insert 5 - 1

1           SECTION ~~1.~~ 77.22 (1) of the statutes is amended to read:  
2           77.22 (1) There is imposed on the grantor of real estate a real estate transfer  
3 fee at the rate of 30 cents for each \$100 of value or fraction thereof on every  
4 conveyance not exempted or excluded under this subchapter. In regard to land  
5 contracts the value is the total principal amount that the buyer agrees to pay the  
6 seller for the real estate. This fee shall be collected by the register at the time the  
7 instrument of conveyance is submitted for recording. Except as provided in s. 77.255,  
8 at the time of submission the grantee or his or her duly authorized agent or other  
9 person acquiring an ownership interest under the instrument, or the clerk of court  
10 in the case of a foreclosure under s. 846.16 (1), shall execute a return, signed by both

1 grantor and grantee, on the form prescribed under sub. (2). The register shall enter  
 2 the fee paid on the face of the deed or other instrument of conveyance before  
 3 recording, and, except as provided in s. 77.255, submission of a completed real estate  
 4 transfer return and collection by the register of the fee shall be prerequisites to  
 5 acceptance of the conveyance for recording. The register shall have no duty to  
 6 determine either the correct value of the real estate transferred or the validity of any  
 7 exemption or exclusion claimed. If the transfer is not subject to a fee as provided in  
 8 this subchapter, the reason for exemption shall be stated on the face of the  
 9 conveyance to be recorded by reference to the proper subsection under s. 77.25. No  
 10 exemption shall be granted under s. 77.25 (6) or (6m), unless a certified copy of the  
 11 document providing evidence of the merger or conversion, as filed with the state  
 12 in which the surviving entity is organized, is submitted with the return.

History: 1971 c. 150; 1977 c. 29; 1981 c. 20; 1985 a. 54; 1985 a. 174 ss. 1, 2, 7; 1985 a. 332; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 307; 1995 a. 27 ss. 3475m to 3476, 9116 (5).

13 **SECTION 2.** 77.264 of the statutes is created to read:

14 **77.264 Merger and conversion reports.** (1) If an acquired business entity  
 15 in a merger or the converted business entity in a conversion had a fee simple  
 16 ownership interest in any Wisconsin real estate immediately prior to the merger or  
 17 conversion, the surviving business entity shall submit a report to the department of  
 18 revenue no later than 60 days after the effective date of the merger or conversion that  
 19 provides the following information:

20 (a) The effective date of the merger or conversion. ✓

21 (b) The name and address of each business entity that is a party to the merger  
 22 or conversion. ✓

1 (c) The name and telephone number of any person at the surviving business  
2 entity that the department of revenue may contact with regard to submitting the  
3 report and the information contained in the report. ✓

4 (d) The parcel identification number of each fee simple ownership interest in  
5 Wisconsin real estate owned by the surviving business entity and municipality in  
6 which such interest is located. ✓

7 (e) In the case of a conversion, a sworn statement that, after the conversion, the  
8 ownership interests in the surviving entity are identical with the ownership  
9 interests in the original entity immediately preceding the conversion. ✓

10 (f) A certified copy of the document providing evidence of the merger or  
11 conversation, as filed with the state in which the surviving entity is organized and  
12 a copy of any other merger or conversion plan, regardless of whether the plan is  
13 required to be filed with the state in which the surviving entity is organized. ✓

14 (2) (a) If a surviving entity required to submit a report under sub. (1), fails to  
15 file the report within the time provided under sub. (1), the surviving entity is subject  
16 to a penalty in an amount equal to \$200 for each day that the report is late, but not  
17 to exceed \$7,500, except that no penalty shall be imposed under this paragraph if the  
18 surviving entity can shown good cause for submitting a late report and if submitting  
19 a late report is not the result of the surviving entity's neglect. ✓

20 (b) If a surviving entity required to submit a report under sub. (1), fails to  
21 specify in the report each municipality in which a fee simple ownership interest in  
22 Wisconsin real estate owned by the surviving entity is located, the surviving entity  
23 is subject to a penalty in an amount equal to \$1,500 for each municipality not  
24 specified in the report and in which such ownership interest in located. ✓

1           **(3)** The reports submitted under this section are privileged information, except  
2           that the department of revenue may disclose the reports and information from the  
3           reports for the sole purpose of administering and enforcing this subchapter. ✓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4031/1dn

CTS:lmk:rs

January 30, 2006

Representative McCormick:

Please review this draft carefully to ensure it is consistent with your intent.

Note that 2003 SB 218 appears to contain an error with respect to the treatment of current s. 180.1105 (1) (c) and (d), relating to requirements for articles of merger or share exchange for business corporations. For this reason, it was unclear how this draft should deal with these paragraphs. In this draft, I have assumed that you intended to retain these paragraphs. If you intend for the draft to repeal these paragraphs, the draft will have to be revised.

Christopher T. Sundberg  
Legislative Attorney  
Phone: (608) 266-9739  
E-mail: [christopher.sundberg@legis.state.wi.us](mailto:christopher.sundberg@legis.state.wi.us)