



411 East Wisconsin Avenue  
Suite 2040  
Milwaukee, Wisconsin 53202-4497  
414.277.5000  
Fax 414.271.3552  
www.quarles.com

Attorneys at Law in  
Milwaukee and Madison, Wisconsin  
Naples and Boca Raton, Florida  
Phoenix and Tucson, Arizona  
Chicago, Illinois

Writer's Direct Dial: 414.277.5883  
E-Mail: [srd@quarles.com](mailto:srd@quarles.com)

February 6, 2006

VIA E-MAIL [JWESTPHAL@WISBAR.ORG](mailto:JWESTPHAL@WISBAR.ORG)

Mr. Jason J. Westphal  
Government Relations Coordinator  
State Bar of Wisconsin  
5302 Eastpark Boulevard  
P.O. Box 7158  
Madison WI 53707-7158

**RE: LRB-4031 (Chapter 180, etc.)**

Dear Jason:

I have reviewed the sections of the Bill which relate to the elimination of the conveyancing requirement and the addition to the statutes of a new real estate transfer return requirement, a report to the WDOR, etc.

I have several very substantive proposed revisions to the bill as drafted by the LRB. The purpose of this letter is to transmit to you my proposed revisions (which I have marked in handwriting on the draft bill) and to explain my reasons for the most major of the proposed changes. I have reviewed sections 1, 2, 4-7, 25, 30-31, 37-40 and 42-45, as they relate to the subjects for which I took responsibility. I have not purported to review the other sections of the bill.

By copy of this letter to Pat Quick at Foley & Lardner and Walt Skipper at Quarles & Brady, I am informing them of my proposed revisions and inviting them to weigh in with their comments and suggestions.

As it is the basis for the subjects I will deal with, I am enclosing a copy of the June 13, 2005 "Summary" which reflects the points that were agreed upon with the WDOR last summer. The

Mr. Jason J. Westphal  
February 6, 2006  
Page 2

language in the Summary was written very carefully and precisely so as to reflect what was agreed upon. As I will discuss in greater detail below, some of these points were not accurately captured in the bill draft and need revision.

1. I have modified the description in the Analysis by the LRB to reflect various revisions I propose to the actual bill language.

2. I have no problem with DOR's proposed changes reflected in Dana Erlandsen's 2/3/06 memo. I would, however, point out that her paragraph 7 is not really within the scope of the discussions we had with DOR last summer.

3. Because the DOR (see Dana Erlandsen's 2/3/06 e-mail) now says the DOR feels the amendment to Section 77.22(1) is unnecessary, the proposed revisions I made to that section's new last sentence are now moot.

4. I have modified section 2 of the bill, relating to the required report to the WDOR, in several respects. New proposed section 77.264(1)(d) incorrectly refers to "Wisconsin real estate owned by the surviving business entity" as being required to be identified, whereas we had agreed that the report is to identify - not the real estate owned by the surviving business entity - but rather the real estate owned by the acquired business entity in a merger or by the converted business entity in a conversion. See Section 3.(d) of the 6/13/05 Summary. I am proposing language to correct this as well as a companion change in Section 77.264(2)(b).

5. Another important change I am proposing relates to the new penalties prescribed for failure to comply with the new reporting requirements. I have added the word "willful" ahead of "neglect" in section 77.264(2)(a) to reflect our agreement with WDOR. See section 5 of the Summary. I have also added language to reflect the same conditions for the imposition of a penalty in section 77.264(2)(b) relating to the failure to specify in the report each municipality in which a fee simple ownership interest in Wisconsin real estate is owned by the acquired or converted business entity.

Mr. Jason J. Westphal  
February 6, 2006  
Page 3

6. All of the revisions to eliminate the conveyancing requirement in Chapters 179, 180, 181 and 183, are correct. They are the same as the changes contained in 2003 SB 218.

7. My proposed changes to sections 5-6, 23, 31, 37, 40, 42 and 45 are simply for clarification.

8. The WDFI quarterly report to WDOR described in section 7 of the Summary has not been included in the bill. I had thought that this was a quarterly report which WDOR had wanted. Has WDOR decided it doesn't want it? Certainly the State Bar and its members don't care whether this report is in the bill, but WDOR might care, and we did agree with it.

9. A final and extremely important issue is the failure of the draft bill to speak to the issue described in section 6(b) of the 6/13/05 Summary. Wisconsin may be the only state in the country which will now have a required report of the type described in new Section 77.264, and it is therefore vitally important that persons engaging in mergers and conversions be aware of this report requirement, as there are penalties for failure to comply. One of the key points which had been agreed upon with WDOR as part of the overall package is that DFI prescribed forms for Articles of Merger and for a Certificate of Conversion alert the filer to the requirement of the new WDOR Report. See section 6(b) of the 6/13/05 Summary. This notification is missing from the draft bill. The bill does indeed include provisions to the effect that articles of merger and a certificate of conversion contain a new requirement of a statement indicating whether the merged or converted entity owned a fee simple ownership interest in Wisconsin real estate (see, e.g., section 23 (lines 19-21 on p. 22) and section 31 (lines 19-21 on p. 24)), but there is nothing in the bill requiring a WDFI notice of the new WDOR Report requirement.

Although similar additional language will be required for chapters 179, 181 and 183, I have taken as my example, the additional changes which I believe should be made to chapter 180. Section 180.0121(1)4. of the statutes requires DFI to prescribe a form for an application for a certificate of conversion, and indeed DFI has prescribed such a form. Curiously, section 180.0121 merely permits, but does not require, the DFI to prescribe a form for articles of merger, but

Mr. Jason J. Westphal  
February 6, 2006  
Page 4

the DFI has in fact prescribed such a form. The key point is that the instructions to each of these forms should be required to alert the reader to the new DOR reporting requirement described in new section 77.264(1) of the statutes.

I am enclosing proposed language to be added to section 180.0121(1) and (2) requiring these new instructions. We and the DOR agreed last June that these instructions should be added to these forms. Of course analogous bill language will need to be drafted to reflect analogous requirements in chapters 179, 181 and 183. If Chris Sundberg at LRB would like to discuss the language I propose for how these statutory changes should be made, I would of course be pleased to have that discussion with him.

I think it would be good if we could all have another look at revised bill language reflecting the points I have made in this letter as well as those proposed by Dana Erlandsen. Pat Quick and Walt Skipper may have comments about my suggested revisions as well as additional comments relating to the other sections of the bill.

Please do not hesitate to call me, Jason, with any questions you may have.

Sincerely,



Steven R. Duback

SRD:bjg  
960471.50000  
Enclosures

cc w/enc: Pat Quick (email: pgquick@foley.com)  
Walter J. Skipper (wjs@quarles.com)

SECTION \_\_\_\_ . 180.0121(1)(b) of the statutes is amended to read:

180.0121(1)(b) The forms prescribed by the department under par.(a)1., 2. and 3. shall require disclosure of only the information required under ss. 180.1503, 180.1520, 180.1622 and 180.1921, respectively. The form prescribed by the department under par. (a)4. shall include an instruction indicating that if the business entity that is to be converted owns a fee simple ownership interest in any Wisconsin real estate the converted entity is required to comply with the reporting requirements of s.77.264(1).

SECTION \_\_\_\_ . 180.0121(2) of the statutes is amended to read:

180.0121(2) The department may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but use of these forms is not mandatory. Any form prescribed by the department for articles of merger under s.180.1105 shall include an instruction indicating that if a merging business entity owns a fee simple ownership interest in any Wisconsin real estate the business entity surviving the merger is required to comply with the reporting requirements of s. 77.264(1).

Summary of Statutory Changes to Eliminate  
the Conveyancing Requirement and to  
Replace It with Other New Reporting Requirements

1. Eliminate the conveyancing requirement in Sections 180.1106(1)(b) and 180.1161(4)(c), Wis. Stats., and the counterpart provisions in the Wisconsin LLC, partnership and non-stock corporation statutes.

2. Add a new requirement to the Wisconsin real estate transfer fee requiring that if exemption for a merger under §77.25(6) or for a conversion under §77.25(6m) is claimed on a transfer fee return, a certified copy of the document evidencing the merger or conversion as filed with the state in which the surviving business entity in a merger or the surviving business entity in a conversion is organized must be attached to the transfer fee return as a condition to the exemption.

3. Provide for a new report (the "DOR Report") to be filed with the DOR by the surviving business entity in a merger or by the surviving business entity in a conversion if the acquired business entity in a merger or the converted business entity in a conversion owned a fee owned interest in Wisconsin real estate immediately prior to the merger or conversion. The DOR Report will require the following information:

(a) The effective date of the merger or conversion;

(b) The name and address of each business entity party to the merger or conversion;

(c) The name of a contact person and his or her telephone number at the business entity surviving the merger or the business entity surviving the conversion;

(d) A listing of the parcel identification number of each fee owned interest in Wisconsin real estate owned by the acquired business entity in a merger or by the converted business entity in a conversion together with the name of the municipality in which each such fee owned interest is located;

(e) In the case of a conversion, a sworn statement made under penalties of perjury that after a conversion the ownership interests in the converted business entity are identical with the ownership interests in the business entity surviving the conversion immediately prior to the conversion; and

(f) A certified copy of the document evidencing the merger or conversion as filed with the WDFI or if no such filing with WDFI is required, a certified copy of such document as filed with the state in which the surviving business entity in a merger or the surviving business entity in a conversion is organized, together with a copy of any plan of merger or plan of conversion not required to be filed as part of such document, provided that any such unfiled plan of merger or conversion shall be kept confidential by the DOR except for purposes of the administration and enforcement of the Wisconsin real estate transfer fee.

4. The DOR Report will be required to be filed with the DOR within sixty (60) days after the effective date of the merger or conversion.

5. Late filing of the DOR Report will result in a penalty of \$200 per day for each day it is late up to a maximum penalty of \$7,500, and a \$1,500 per municipality penalty may be levied for failure to list a municipality in which a fee owned interest in Wisconsin real estate is owned by the acquired business entity in a merger or by the converted business entity in a conversion. No penalty will apply if the failure to timely file the DOR Report is due to reasonable cause and not due to willful neglect.

6. WDFI prescribed forms for Articles of Merger and for a Certificate of Conversion will be modified to (a) require the filer to check a box "yes" or "no" indicating whether or not the acquired business entity in a merger or the converted business entity in a conversion owns any fee owned interest in Wisconsin real estate, and (b) provide a notice to the filer of the requirement of the DOR Report.

7. WDFI will be required to provide DOR with quarterly reports in a format specified by the DOR of all mergers and conversions for which articles of merger or a certificate of conversion has been filed in its office during the previous quarter which indicate that the acquired business entity in a merger or the converted business entity in a conversion owned any fee owned interest in Wisconsin real estate.

## Sundberg, Christopher

---

**From:** Jason Westphal [JWestphal@wisbar.org]  
**Sent:** Tuesday, February 07, 2006 12:24 PM  
**To:** Sundberg, Christopher  
**Cc:** Richards, Mike; Soulis, Dave  
**Subject:** Revisions to LRB-4031 (and Sen. companion)

**Importance:** High

**Attachments:** 2-6-06 Duback Memo (Ch. 180).pdf; Sec. 180.0121 Language.pdf; SBW-DOR Agreement (6-13-05).pdf



2-6-06 Duback



Sec. 180.0121



SBW-DOR

Memo (Ch. 180).p...Language.pdf (43...reement (6-13-05).p

Chris:

Please see attached/below...

Contact Atty. Steve Duback (Quarles & Brady) at (414) 277-5883 or [srd@quarles.com](mailto:srd@quarles.com)  
<<mailto:srd@quarles.com>> w/ any questions.

Your prompt attention to this matter is greatly appreciated!

Jason J. Westphal  
Government Relations Coordinator  
State Bar of Wisconsin  
5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158  
Phone: (608) 250-6077  
Cell: (608) 695-5686  
Fax: (608) 257-4343  
[jwestphal@wisbar.org](mailto:jwestphal@wisbar.org) <<mailto:jwestphal@wisbar.org>>

WISCONSIN LAWYERS  
Expert Advisers. Serving You.

-----  
-----  
The Department of Revenue has the following comments, based on its review of the proposed legislation:

1. The bill essentially tracks the agreement we had earlier reached with the State Bar. Most of our comments are cosmetic rather than substantive.
2. Because the new electronic transfer returns, as developed, cannot accept attachments, and the information that we need will be in the reports, the requirement that we had earlier asked be added to 77.22(1) (lines 11-14 on page 6) is now mostly superfluous and can be deleted, since it would just add work for the registers of deeds. The only issue would come up if the entity filed a deed many years down the line after the records have been destroyed, and then they might have to provide all this information to us again on audit.
3. On page 6, line 19, the reports should be required to be on a form provided by DOR for ease of administration both by us and the local tax administrators. A form for this will be straightforward to develop. We may also be able to get an electronic filing option for these reports available in the near future, but that doesn't need to be included in the statute.

✓ 4. Page 6, line 23, the FEINs of each business entity party to the merger or conversion should also be provided for tracking purposes.

5. Page 7 line 3, should add the address of the person at the surviving business entity for contact, and, if different, the address to which the tax bill(s) for the real estate should be sent.

✓ 6. Page 8 line 1, the word "privileged" is inappropriate; "confidential" would be consistent with treatment of other tax information. Currently such material is an open record.

7. Page 8, line 8 (and similar parallel provisions later), the existing language is a little confusing; we'd suggest that the first phrase be changed to "The converted business entity" for clarity.

Dana J. Erlandsen  
WI Dept. of Revenue Chief Counsel  
PO Box 8907  
Madison, WI 53708-8907  
(608) 266-3974  
(608) 266-9949 FAX  
dana.erlandsen@dor.state.wi.us

*up*  
*according to Steve*  
*Duback*

**BILL**

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.

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, 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.

on a real estate transfer return

acquired in the merger or conversion

fee simple ownership in Wisconsin real estate

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

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

- 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

**BILL**

1 person acquiring an ownership interest under the instrument, or the clerk of court  
 2 in the case of a foreclosure under s. 846.16 (1), shall execute a return, signed by both  
 3 grantor and grantee, on the form prescribed under sub. (2). The register shall enter  
 4 the fee paid on the face of the deed or other instrument of conveyance before  
 5 recording, and, except as provided in s. 77.255, submission of a completed real estate  
 6 transfer return and collection by the register of the fee shall be prerequisites to  
 7 acceptance of the conveyance for recording. The register shall have no duty to  
 8 determine either the correct value of the real estate transferred or the validity of any  
 9 exemption or exclusion claimed. If the transfer is not subject to a fee as provided in  
 10 this subchapter, the reason for exemption shall be stated on the face of the  
 11 conveyance to be recorded by reference to the proper subsection under s. 77.25. *No e*

12 ~~exemption shall be granted under s. 77.25 (6) or (6m), unless~~ a certified copy of the  
 13 document providing evidence of the merger or conversion, as filed with the state in  
 14 which the surviving entity is organized, <sup>shall be</sup> submitted with the return.

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

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

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

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

*If an exemption under either s. 77.25 (6) or (6m) is claimed on a real estate transfer return*

**BILL**

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.

*acquired business entity in a merger or by the converted business entity in a conversion*

4 (d) The parcel identification number of each fee simple ownership interest in  
5 Wisconsin real estate owned by the ~~surviving business entity~~ and <sup>the</sup> 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 conversion, as filed with the state in which the surviving entity is organized and a  
12 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 show good cause for submitting a late report and if submitting  
19 a late report is not the result of the surviving entity's ~~neglect~~ willful

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

*required business entity in a merger or by the converted business entity in a conversion*

*except that no penalty shall be imposed under this paragraph if the surviving entity can show good cause for the failure and if the failure is not the result of the surviving entity's willful neglect.*

**BILL**

1           (3) The reports submitted under this section are <sup>is</sup> ~~are~~ <sup>confidential</sup> 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.

4           SECTION 3. 179.02 (1) of the statutes is amended to read:

5           179.02 (1) Shall contain, with or without abbreviation, the words "limited  
 6 partnership".

7           SECTION 4. 179.76 (4) (c) of the statutes is amended to read:

8           179.76 (4) (c) The business entity continues to be vested with title to all  
 9 property owned by the business entity that was converted without reversion or  
 10 impairment, ~~provided that, if the converting business entity has an interest in real~~  
 11 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~  
 12 ~~transfer that interest to the business entity surviving the conversion and shall~~  
 13 ~~execute any real estate transfer return required under s. 77.22. The business entity~~  
 14 ~~surviving the conversion shall promptly record the instrument of conveyance under~~  
 15 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~  
 16 ~~is located.~~

17           SECTION 5. 179.76 (5) (bm) of the statutes is created to read:

18           179.76 (5) (bm) A statement indicating whether the business entity that is to  
 19 be converted <sup>own</sup> ~~has~~ a fee simple ownership interest in any Wisconsin real estate.

20           SECTION 6. 179.77 (5) (bm) of the statutes is created to read:

21           179.77 (5) (bm) A statement indicating whether <sup>the</sup> a business entity merged with  
 22 or into the surviving entity in the merger ~~has~~ <sup>which</sup> a fee simple ownership interest in any  
 23 Wisconsin real estate. <sup>own</sup>

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

**BILL**

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

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

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

7           (e) In the case of a merger, any amendments in the articles of incorporation of  
8 the surviving corporation that are intended by the parties to the merger to take effect  
9 upon the merger or, if there are no such amendments, a statement that the articles  
10 of incorporation of the surviving corporation or another corporation that is a party  
11 to the merger will be the articles of incorporation of the surviving corporation.

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

14           (g) A statement that the surviving or acquiring corporation will provide a copy  
15 of the plan of merger or share exchange, upon request and without cost, to any  
16 shareholder of a corporation that was a party to the merger or share exchange or,  
17 upon payment to the surviving or acquiring corporation of an amount equal to the  
18 cost of producing the copy, to any other interested person.

19           (h) In the case of a merger, a statement indicating whether <sup>the</sup> a business entity  
20 merged with or into the surviving entity in the merger ~~has~~ a fee simple ownership <sup>owns</sup>  
21 interest in any Wisconsin real estate.

22           SECTION 24. 180.1105 (1) (c) and (d) of the statutes are renumbered 180.1105  
23 (1) (am) and (i).

24           SECTION 25. 180.1106 (1) (b) of the statutes is amended to read:

## BILL

1           180.1150 (2) Unless otherwise provided in the articles of incorporation of a  
2           resident domestic corporation or otherwise specified by the board of directors of the  
3           resident domestic corporation in accordance with s. 180.0824 (3), and except as  
4           provided in sub. (3) or as restored under sub. (5), the voting power of shares of a  
5           resident domestic corporation held by any person, including shares issuable upon  
6           conversion of convertible securities or upon exercise of options or warrants, in excess  
7           of 20% of the voting power in the election of directors shall be limited to 10% of the  
8           full voting power of those shares.

9           SECTION 30. 180.1161 (4) (c) of the statutes is amended to read:

10          180.1161 (4) (c) The business entity continues to be vested with title to all  
11          property owned by the business entity that was converted without reversion or  
12          impairment, ~~provided that, if the converting business entity has an interest in real~~  
13          ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~  
14          ~~transfer that interest to the business entity surviving the conversion and shall~~  
15          ~~execute any real estate transfer return required under s. 77.22. The business entity~~  
16          ~~surviving the conversion shall promptly record the instrument of conveyance under~~  
17          ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~  
18          ~~is located.~~

19          SECTION 31. 180.1161 (5) (bm) of the statutes is created to read:

20          180.1161 (5) (bm) A statement indicating whether the business entity that is  
21          to be converted <sup>owns</sup> ~~has~~ a fee simple ownership interest in any Wisconsin real estate.

22          SECTION 32. 180.1201 (title) of the statutes is amended to read:

23          **180.1201 (title) Sale of assets in regular course of business; mortgage**  
24          **of assets; transfer of assets to subsidiary.**

25          SECTION 33. 180.1201 (1) (d) of the statutes is created to read:

**BILL**

1 more than 20 percent the total number of voting shares of the parent outstanding  
2 immediately before the merger.

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

9 **SECTION 36.** 180.1302 (4) of the statutes is amended to read:

10 180.1302 (4) ~~Except in a business combination or unless~~ Unless the articles of  
11 incorporation provide otherwise, subs. (1) and (2) do not apply to the holders of shares  
12 of any class or series if the shares of the class or series are registered on a national  
13 securities exchange or quoted on the National Association of Securities Dealers, Inc.,  
14 automated quotations system on the record date fixed to determine the shareholders  
15 entitled to notice of a shareholders meeting at which shareholders are to vote on the  
16 proposed corporate action.

17 **SECTION 37.** 181.1105 (1m) of the statutes is created to read:

18 181.1105 (1m) STATEMENT AS TO PROPERTY OWNED BY NONSURVIVING ENTITY. A  
19 statement indicating whether a business entity merged with or into the surviving  
20 entity in the merger ~~has~~ a fee simple ownership interest in any Wisconsin real estate. owne

21 **SECTION 38.** 181.1106 (2) of the statutes is amended to read:

22 181.1106 (2) TITLE TO PROPERTY. The title to all real estate and other property  
23 owned by each business entity that is a party to the merger is vested in the surviving  
24 business entity without reversion or impairment subject to any conditions to which  
25 the property was subject before the merger, ~~provided that, if a merging business~~

## BILL

1 ~~entity has an interest in real estate in Wisconsin on the date of the merger, the~~  
2 ~~merging business entity shall transfer that interest to the business entity surviving~~  
3 ~~the merger and shall execute any real estate transfer return required under s. 77.22.~~  
4 ~~The business entity surviving the merger shall promptly record the instrument of~~  
5 ~~conveyance under s. 59.43 in the office of the register of deeds for each county in~~  
6 ~~which the real estate is located.~~

7 SECTION 39. 181.1161 (4) (c) of the statutes is amended to read:

8 181.1161 (4) (c) The business entity continues to be vested with title to all  
9 property owned by the business entity that was converted without reversion or  
10 impairment, ~~provided that, if the converting business entity has an interest in real~~  
11 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~  
12 ~~transfer that interest to the business entity surviving the conversion and shall~~  
13 ~~execute any real estate transfer return required under s. 77.22. The business entity~~  
14 ~~surviving the conversion shall promptly record the instrument of conveyance under~~  
15 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~  
16 ~~is located.~~

17 SECTION 40. 181.1161 (5) (bm) of the statutes is created to read:

18 181.1161 (5) (bm) A statement indicating whether the business entity that is  
19 to be converted ~~has~~ has a fee simple ownership interest in any Wisconsin real estate. - 6/11/12

20 SECTION 41. 183.1202 (1) of the statutes is amended to read:

21 183.1202 (1) Unless otherwise provided in an operating agreement and except  
22 as provided in s. 180.11045 (2), a limited liability company that is a party to a  
23 proposed merger shall approve the plan of merger by an affirmative vote of members  
24 as described in s. 183.0404 (1) (a). Unless otherwise provided in an operating  
25 agreement or waived by the members, a limited liability company may obtain the

**BILL**

1 approving vote of its members only after providing the members with not less than  
2 10 nor more than 50 days' written notice of its intent to merge accompanied by the  
3 plan of merger.

4 **SECTION 42.** 183.1204 (1) (cm) of the statutes is created to read:

5 183.1204 (1) (cm) A statement indicating whether <sup>the</sup> a business entity merged <sup>which</sup>  
6 with or into the surviving entity in the merger ~~has~~ a fee simple ownership interest <sup>there</sup>  
7 in any Wisconsin real estate.

8 **SECTION 43.** 183.1205 (2) of the statutes is amended to read:

9 183.1205 (2) The title to all property owned by each business entity that is a  
10 party to the merger is vested in the surviving business entity without reversion or  
11 impairment, ~~provided that, if a merging business entity has an interest in real estate~~  
12 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~  
13 ~~that interest to the business entity surviving the merger and shall execute any real~~  
14 ~~estate transfer return required under s. 77.22. The business entity surviving the~~  
15 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~  
16 ~~office of the register of deeds for each county in which the real estate is located.~~

17 **SECTION 44.** 183.1207 (4) (c) of the statutes is amended to read:

18 183.1207 (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~~

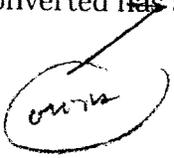
**BILL**

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 45.** 183.1207 (5) (bm) of the statutes is created to read:

4 183.1207 (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 (END)



## Sundberg, Christopher

---

**From:** Soulis, Dave  
**Sent:** Thursday, February 09, 2006 3:13 PM  
**To:** Sundberg, Christopher  
**Subject:** RE: LRB-4031 (Ch. 180)

Chris,

Yes, please go ahead with the recommendations.

Thanks,

Dave

-----Original Message-----

**From:** Sundberg, Christopher  
**Sent:** Thursday, February 09, 2006 3:12 PM  
**To:** Soulis, Dave  
**Cc:** 'Jason Westphal'  
**Subject:** RE: LRB-4031 (Ch. 180)

Dave, would you like me to do a redraft with these changes?

-----Original Message-----

**From:** Jason Westphal [mailto:JWestphal@wisbar.org]  
**Sent:** Thursday, February 09, 2006 2:50 PM  
**To:** Sundberg, Christopher  
**Cc:** Richards, Mike; Soulis, Dave  
**Subject:** LRB-4031 (Ch. 180)

Chris:

Please note the following...

\* In .11045, at least one reference to "consummation of the merger" was changed to "effective time of the merger," but there remains at least one reference to "consummation of the merger."

\* In sec. 35 of the bill, there is a reference to "effective date of the merger." Should that refer to "time"? Just after that, the word "hold" appears, and it should read "holds."

Jason J. Westphal  
Government Relations Coordinator  
State Bar of Wisconsin  
5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158  
Phone: (608) 250-6077  
Cell: (608) 695-5686  
Fax: (608) 257-4343  
jwestphal@wisbar.org

WISCONSIN LAWYERS  
Expert Advisers. Serving You.