

# 05hr\_SC-JCEDCA\_sb0619\_pt01



(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Job Creation, Economic Development and Consumer Affairs (SC-JCEDCA)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Senate

### Record of Committee Proceedings

#### **Committee on Job Creation, Economic Development and Consumer Affairs**

##### **Senate Bill 619**

Relating to: mergers, conversions, and other business combinations; merger and conversion reports for real estate transfer fee purposes; the authority of the boards of directors of business corporations and corporate committees; corporate shareholder notices and meetings; the transfer of corporate property to certain affiliates; naming limited partnerships; and providing penalties.

By Senators Kanavas, Grothman and Leibham; cosponsored by Representatives Lamb, McCormick, Hahn, Hundertmark, Albers, Townsend and Strachota.

February 22, 2006      Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

March 1, 2006          **PUBLIC HEARING HELD**

Present:    (4)      Senators Kanavas, Zien, Lassa and Decker.  
Absent:    (1)      Senator Reynolds.

##### Appearances For

- Terri McCormick, Madison — Representative
- Steven Duback — WI Energy Corp & State Bar
- Sherrie Gates-Hendrix — Dept of Revenue
- Jeff Schoepke, Madison — WMC
- Joel Haubrich — WE Energies

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- Walt Skipper, Elm Grove — WI State Bar
- Katie Walby — Johnson Controls

##### Registrations Against

- None.

March 1, 2006          **EXECUTIVE SESSION HELD**

Present: (4) Senators Kanavas, Zien, Lassa and Decker.  
Absent: (1) Senator Reynolds.

Moved by Senator Zien, seconded by Senator Decker that **Senate Substitute Amendment 1** be recommended for adoption.

Ayes: (4) Senators Kanavas, Zien, Lassa and Decker.  
Noes: (0) None.  
Absent: (1) Senator Reynolds.

ADOPTION OF SENATE SUBSTITUTE AMENDMENT 1 RECOMMENDED,  
Ayes 4, Noes 0

Moved by Senator Zien, seconded by Senator Decker that **Senate Bill 619** be recommended for passage.

Ayes: (4) Senators Kanavas, Zien, Lassa and Decker.  
Noes: (0) None.  
Absent: (1) Senator Reynolds.

PASSAGE RECOMMENDED, Ayes 4, Noes 0

James Michel  
Committee Clerk

**SENATE BILL 619 (LRB -4583)**

An Act to repeal 180.0825 (2) (a), 180.0825 (5) (a) to (h) and 180.1105 (1) (a) and (b); to renumber 180.1105 (1) (c) and (d); to renumber and amend 180.0602 (3); to consolidate, renumber and amend 180.0825 (2) (intro.) and (b); to amend 77.22 (1), 179.02 (1), 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3), 180.0825 (1), 180.1103 (1), 180.1106 (1) (b), 180.1130 (3) (a) (intro.), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c), 180.1201 (title), 180.1201 (2), 180.1302 (4), 181.1106 (2), 181.1161 (4) (c), 183.1202 (1), 183.1205 (2) and 183.1207 (4) (c); to repeal and recreate 180.1130 (14); and to create 77.264, 179.76 (5) (bm), 179.77 (5) (bm), 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and (bm), 180.11045, 180.1105 (1) (bm), (cm), (dm) and (e) to (h), 180.1161 (5) (bm), 180.1201 (1) (d), 180.1302 (1) (a) 3., 181.1105 (1m), 181.1161 (5) (bm), 183.1204 (1) (cm) and 183.1207 (5) (bm) of the statutes; relating to: mergers, conversions, and other business combinations; merger and conversion reports for real estate transfer fee purposes; the authority of the boards of directors of business corporations and corporate committees; corporate shareholder notices and meetings; the transfer of corporate property to certain affiliates; naming limited partnerships; and providing penalties.

**2006**

02-22.	S.	Introduced by Senators <b>Kanavas, Grothman and Leibham</b> ; cosponsored by Representatives <b>Lamb, McCormick, Hahn, Hundertmark, Albers, Townsend and Strachota</b> .	
02-22.	S.	Read first time and referred to committee on Job Creation, Economic Development and Consumer Affairs .....	617
02-27.	S.	Senate substitute amendment 1 offered by Senator Kanavas ( <b>LRB s0581</b> ) .....	636
02-28.	S.	Senate substitute amendment 2 offered by Senator Kanavas ( <b>LRB s0573</b> ) .....	647
03-01.	S.	Public hearing held.	
03-01.	S.	Executive action taken.	
03-04.	S.	Report adoption of Senate Substitute Amendment 1 recommended by committee on Job Creation, Economic Development and Consumer Affairs, Ayes 4, Noes 0 .....	685
03-04.	S.	Report passage as amended recommended by committee on Job Creation, Economic Development and Consumer Affairs, Ayes 4, Noes 0 .....	685
03-04.	S.	Available for scheduling.	
03-06.	S.	Fiscal estimate received.	
03-06.	S.	Fiscal estimate received.	
03-06.	S.	Placed on calendar 3-7-2006 by committee on Senate Organization.	
03-07.	S.	Read a second time .....	701
03-07.	S.	Senate amendment 1 to Senate substitute amendment 1 offered by Senator Kanavas ( <b>LRB a2643</b> ) .....	701
03-07.	S.	Senate amendment 1 to Senate substitute amendment 1 <b>adopted</b> .....	701
03-07.	S.	Senate substitute amendment 1 <b>adopted</b> .....	701
03-07.	S.	Ordered to a third reading .....	701
03-07.	S.	Rules suspended .....	701
03-07.	S.	Read a third time and <b>passed</b> , Ayes 33, Noes 0 .....	701
03-07.	S.	Ordered immediately messaged .....	701
03-21.	A.	Received from Senate .....	984
03-21.	A.	Read first time and referred to committee on Financial Institutions .....	987
04-06.	A.	Public hearing held.	
04-19.	A.	Executive action taken.	
04-19.	A.	Report concurrence recommended by committee on Financial Institutions, Ayes 13, Noes 0 .....	1018
04-19.	A.	Referred to committee on Rules .....	1018
04-19.	A.	Placed on calendar 4-25-2006 by committee on Rules.	
04-25.	A.	Read a second time .....	1040
04-25.	A.	Ordered to a third reading .....	1040
04-25.	A.	Rules suspended .....	1040
04-25.	A.	Read a third time and <b>concurred in</b> .....	1040
04-25.	A.	Ordered immediately messaged .....	1040
04-26.	S.	Received from Assembly concurred in .....	796
05-05.	S.	Report correctly enrolled on 5-5-2006 .....	841
05-23.	S.	Presented to the Governor on 5-23-2006 .....	856
05-30.	S.	Report <b>approved</b> by the Governor on 5-30-2006. 2005 Wisconsin Act 476 .....	874
06-02.	S.	Published 6-13-2006 .....	878



**Vote Record**  
**Committee on Job Creation, Economic Development and Consumer Affairs**

Date: 3/1/2006

Moved by: Zien

Seconded by: Decker

AB \_\_\_\_\_ SB 619 Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

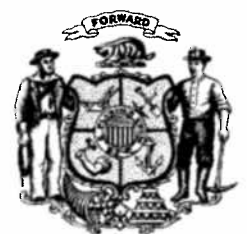
A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

- Recommended for:
- Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement
  - Introduction       Rejection       Tabling       Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Ted Kanavas, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator David Zien</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Thomas Reynolds</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Julie Lassa</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Russell Decker</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	_____	_____	_____	_____



# WISCONSIN STATE LEGISLATURE



# Business Law Section

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Wisconsin Department of Financial  
Institutions

**Thomas L. Frenn**, Past Chairperson  
Petrie & Stocking SC

TO: Senate Committee on Job Creation, Economic  
Development & Consumer Affairs

FROM: Atty. Walter J. Skipper, Vice Chair  
Business Law Section Board  
*State Bar of Wisconsin*

DATE: March 1, 2006

RE: Senate Bill 619

The **Business Law Section** (*State Bar of Wisconsin*) **strongly supports** Senate Bill 619, and would like to thank Senator Kanavas for his leadership on this legislation.

The Business Law Section has been working for several years on a review of Wisconsin's business entity statutes, including the state's corporations statute, Chapter 180. Senate Bill 619 reflects those years of review and is a positive step for Wisconsin to take as it positions itself for future economic development.

Overall, SB 619 will:

- Bring Wisconsin corporate law in line with the laws of other states, including those of Delaware (long considered the benchmark for business-friendly statutes), New York and our neighbors of Minnesota, Michigan and Illinois;
- Permit greater flexibility and ease administration costs in order to allow companies to avoid unnecessary filings, such as the elimination of the redundant plan of merger filing;
- Eliminate the conveyancing requirement and replace it with other new reporting requirements;
- Fix certain valuation formulas inconsistent with the anti-takeover laws;

### State Bar of Wisconsin

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(800) 728-7788 ♦ (608) 257-3838 ♦ Fax (608) 257-5502 ♦ Internet: [www.wisbar.org](http://www.wisbar.org) ♦ Email: [service@wisbar.org](mailto:service@wisbar.org)



- Allow waivability by the board of an anti-takeover provision (Wisconsin law currently has three such provisions, two of which are already waivable...allowing the third provision to be waived provides for consistency and eliminates costly, unnecessary meetings); and
- Allow greater flexibility and ease obligations which are feared to be missed in connection with many business combinations.

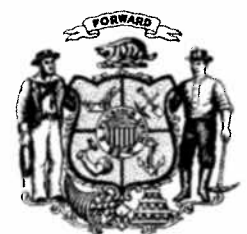
**FOR THE ABOVE REASONS, THE BUSINESS LAW SECTION URGES YOUR  
SUPPORT FOR SENATE BILL 619 AS AMENDED.**

*For additional information contact Jason Westphal, Government Relations Coordinator, at (608) 250-6077 or [jwestphal@wisbar.org](mailto:jwestphal@wisbar.org).*

**NOTE: The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.**



# WISCONSIN STATE LEGISLATURE



**STATEMENT IN SUPPORT OF  
SENATE SUBSTITUTE AMENDMENT 1,  
TO 2005 SENATE BILL 619**

My name is Steven R. Duback. I am an attorney with Quarles & Brady LLP, 411 E. Wisconsin Avenue, Milwaukee, Wisconsin. I appear as a member of the Business Law Section of the Wisconsin State Bar, and also as a representative of Wisconsin Energy who, along with other Wisconsin businesses, is adversely affected by the so-called real estate "conveyancing requirement" which this bill would repeal.

One of the important features of this bill is to eliminate the requirement that in a merger or conversion of business entities, separate deeds or other conveyancing instruments be prepared and recorded describing all of the interests in Wisconsin real estate owned by the merged or converted entity.

This requirement was first made part of the law in 2002 as part of the "Next Economy Legislation."

It was soon realized that complying with this new conveyancing requirement was very time consuming and unnecessary, and that even minor failures to identify all Wisconsin real estate interests owned by a merged or converted entity could throw the validity of a merger or conversion into doubt. The conveyancing requirement covered all interests in Wisconsin real estate including leasehold interests, easements, rights of way, and any other conceivable interest.

The conveyancing requirement would have been repealed by 2003 SB 218 which overwhelmingly passed both houses of the legislature but was then vetoed at the request of the DOR solely because it eliminated the conveyancing requirement.

The DOR's perceived concerns were two-fold: (a) that people would fraudulently claim an exemption from the real estate transfer fee for transactions which weren't really mergers; and (b) that local property tax assessors would not have the ability to know when mergers and conversions had occurred because there would be no separately recorded real estate conveyance.

This bill, which the DOR has now blessed, addresses the DOR's issues:

1. It requires a new written report to DOR following a merger or conversion, identifying the fee

owned Wisconsin real estate interests held by the merged or converted company together with a certified copy of the articles of merger or certificate of conversion, thereby enabling DOR to check the validity of claimed transfer fee exemptions for mergers and conversions. Penalties are provided for failure to timely file the report.

2. It requires persons filing merger and conversion documents with DFI to specifically state whether the merged or converted entity owned any fee interest in Wisconsin real estate.

3. Finally, DFI will be required to provide DOR with a quarterly report of all mergers and conversions where the merged or converted entity had indicated that it owned a fee interest in Wisconsin real estate.

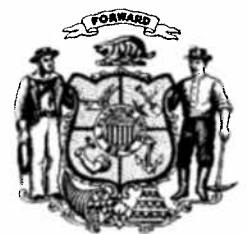
Thus, the DOR will now have all the information it needs to verify the legitimacy of any claimed exemption from the real estate transfer fee, and local assessors will know when a merger or conversion has occurred.

In exchange for this information DOR has agreed that the conveyancing requirement can and should be eliminated, thus avoiding the time consuming and unnecessary burden of identifying all of the real estate interests which a merged or converted entity may own, and then preparing conveyancing documents which historically practitioners have never prepared and which title examiners have never required.

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# WISCONSIN STATE LEGISLATURE



REP. TERRI MCCORMICK: TESTIMONY ON SB 619 –  
SENATE COMMITTEE ON JOB CREATION, ECONOMIC  
DEVELOPMENT AND CONSUMER AFFAIRS

March 1, 2006

Mr. Chairman, Committee members, Thank you for allowing me to testify today on this important piece of legislation. I would like to just say a few words about why I wrote this bill, and then I will turn it over to some of the experts to fill you in on the specifics.

This is a bill that I authored last session as part of my "Blueprint for Change" reform package to promote Economic Development in the state of Wisconsin. I was pleased to work with the State Bar of Wisconsin, which has been working for several years on a review of Wisconsin's business entity statutes, including the state's corporation's statute, Chapter 180. SB 619 reflects those years of review and is a positive step for Wisconsin to take as it positions itself for future economic development.

The version of the bill that I crafted in 2003 with Senator Cathy Stepp (2003 Senate Bill 218) passed unanimously through both houses of the legislature. However, it was vetoed by the Governor after the Department of Revenue expressed concerns. Senator Kanavas and I have been working with the Bill Drafters and the state bar, and we believe we have addressed these concerns.

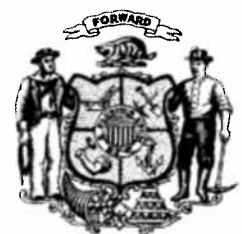
Senate Bill 619 would:

- Bring Wisconsin corporate law in line with the laws of other states, including those of Delaware (long considered the benchmark for business-friendly statutes), New York and our neighbors of Minnesota, Michigan and Illinois;
- Permit greater flexibility and ease administration costs in order to allow companies to avoid unnecessary filings, such as the elimination of the redundant plan of merger filing;
- Fix certain valuation formulas inconsistent with the anti-takeover laws;
- Allow waivability by the board of an anti-takeover provision (Wisconsin law currently has three such provisions, two of which are already waivable...allowing the third provision to be waived provides for consistency and eliminates costly, unnecessary meetings); and
- Allow greater flexibility and ease obligations which are feared to be missed in connection with many business combinations.

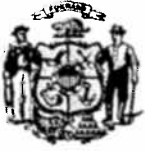
In short, this bill follows in the spirit of the 2003 Wisconsin Act 25, the Small Business Regulation reform that I authored to ensure that Agency rules and other Government regulations were not placing an undue burden on our small businesses. Act 25 recently received one of four National "Best Practice" Awards from the Small Business Administration in Washington D.C. This bill will also help to eliminate red tape and streamline the regulation process, leading to a more "business friendly" climate in Wisconsin. I urge the Committee members to support this very important piece of Economic Development legislation. Thank You.



# WISCONSIN STATE LEGISLATURE







# State of Wisconsin • DEPARTMENT OF REVENUE

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PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

**Jim Doyle**  
Governor

**Michael L. Morgan**  
Secretary of Revenue

Senate Job Creation, Economic Development and Consumer Affairs Committee Hearing,  
March 1, 2006

**SB 619 – Business Mergers, Conversions, RETR and Notices (Sen. Kanavas)**

*Description of Current Law and Proposed Change*

Under current law, conveyances of real property pursuant to a merger or conversion are exempt from the real estate transfer fee. The merging and converting business entities must file a real estate transfer fee return and the surviving entities must record instruments of conveyance with the register of deeds in each county where real estate is located.

Under the bill, conveyances pursuant to a merger or conversion would remain exempt from the real estate transfer fee. However, to claim the exemption, a certified copy of the document providing evidence of the merger or conversion must be submitted with the real estate transfer fee return and a report must be filed with the Department of Revenue no later than 60 days after the effective date of the merger or conversion. A surviving entity that failed to file a timely report could be subject to a penalty.

*Fairness/Tax Equity*

- The changes to the filing requirements in the bill were requested by merging and converting businesses that view them as less burdensome than existing law.

*Administrative Impact/Fiscal Effect*

- Since the business entities are exempt from tax under current law and under the bill, there is no fiscal effect on real estate transfer fee collections. Any additional revenue because of the penalties, for the state and the municipalities, is expected to be minimal.
- The Department suggests deleting the requirement that a certified copy of the document providing evidence of the merger or conversion be attached to the real estate transfer fee return filed with the register of deeds. New electronic transfer returns cannot accept attachments, and the information that would be attached will be included in the reports that must be filed with the Department.
- The bill requires that merger and conversion reports be filed with the Department.
  - For ease of administration for the Department and the local tax administrators, the report should be on a form and in a manner provided by the Department.
  - In addition to the name and address of each business entity that is a party to a merger or conversion, the report should also include the entity's federal employer identification number.

- In addition to the name and telephone number of contact persons, the report should also include the address of the person to contact at the surviving business entity, and, if different, the address to which the tax bill(s) for the real estate should be sent.
  - The word "privileged" should be changed to "confidential" to be consistent with the treatment of other tax information. Currently such material is an open record.
- 
- For clarity, the Department suggests that the sections of chapters 179, 180, 181 and 183 that are amended to remove the current law filing requirements be further amended to begin "The converted business entity continues..." rather than "the business entity continues..."
  - The Department of Revenue suggests that the Department of Financial Institutions be required to provide quarterly reports to Revenue, in a format specified by Revenue, of all mergers and conversions for which articles of merger or a certificate of conversion have been filed. The reports must include information on whether the acquired business entity in the merger or conversion owned any fee simple interests in Wisconsin real estate.

*DOR Position*

- Support, if recommended corrections are made.

February 28, 2006

PW:kg

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