

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

LRB-0045/P1dn  
RAC:jld:jf

October 13, 2000

I have prepared this draft as a preliminary draft because I believe that there are several issues that need clarification before the draft can be prepared for introduction. In addition, I believe that the draft should be reviewed by individuals who are experienced in drafting plans of merger or consolidation for business associations, such as cooperatives. The reason is that I am uncertain if the provisions in this draft can be implemented in the way that you intend.

One of the issues has to do with what is a key feature of your request. This feature is the requirement that a plan of merger or consolidation must have a buy-out procedure. Under current law, in s. 185.61 (1), a plan of merger or consolidation must only indicate how the plan will effect the members; there is no requirement that the equity interests of the members must be purchased by the surviving or new cooperative. By requiring that the equity interests must be purchased, this will obviously impact on those plans of merger or consolidation in which there is no intent to purchase the members' equity interests. Please make certain that you intend to require that each merger or consolidation that involves a cooperative in this state must include a buy-out mechanism.

A related issue involves the property interest that is to be purchased. I have used the term "equity interest" to try to capture the value of the assets of a cooperative that are owned by a member of the cooperative. Please note that there will be instances in which the value of an "equity interest" will not be absolutely certain.

Finally, you should be aware that some cooperatives may already have bylaws or other contractual provisions relating to the distribution of the assets of the cooperative in the event of merger or consolidation or upon dissolution of the cooperative. This draft may, therefore, result in an impairment of contract between the cooperative and its members who have purchased capital stock. If the impairment is substantial, without a significant and legitimate public purpose, the provisions may result in an unconstitutional impairment of contract under art. I, sec. 12, of the Wisconsin Constitution.

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