Bilot, Erin

From: Roys, Lisa
Sent: Wednesday, September 26, 2001 3:15 PM
To: Sen.Meyer; Sen.Cowles; Rep.Jeskewitz; Rep.Plale; Rep.Vrakas; 'lsosnowski@foleylaw.com'; 'tjn@mtfn.com'; 'jboucher@neiderboucher.com'; 'JHildebrandt@foleylaw.com'
Cc: 'jboese@wisbar.org'; Grosenheider, Terry; Anderson, David; Bilot, Erin; Halbur, Jennifer; Huber, Grant; Pleva, Brian; Schooff, Susie; Struck, Patricia; Allen, Ray
Subject: First Draft - Next Economy

Attached is the complete first draft of the "Next Economy" package prepared by the Legislative Reference Bureau. There are a significant number of drafter's questions that need to be addressed. Please review the appropriate subject material and get comments to me by close of business next Wednesday, October 3rd.

If you have any additional questions, please do not hesitate to call me.

01-3724/P1

01-3724/P1dn

Lisa Roys
Policy Advisor, DFI
(608) 266-0450

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–3724/P1dn
RJM&RAC:wlj:pg

September 26, 2001

This preliminary draft constitutes the next economy package. It incorporates LRB–3531/P1 (merger and LLC dissolution provisions), LRBb1570/2 (securities changes), and changes to the business organizations and tax chapters requested by DFI on September 5, 2001. However, the draft does not include the requested changes relating to electronic filing. Please refer to the e–mail from Rob Marchant to Lisa Roys dated September 10, 2001, for a discussion of the issues relating to electronic filing. We will incorporate those changes after you have a chance to read and respond to those issues. Please note the following additional issues regarding this draft:

1. Regarding the treatment of s. 178.43, stats., it appeared as though the only new text was in proposed subs. (2) and (3). Thus, we have renumbered the current text to be sub. (1) and have created subs. (2) and (3). Please review the new text to ensure that it is consistent with your intent. The language includes a few slight clarifications.

2. Regarding proposed s. 179.045, please note that the proposed language, in two different places, required the statement of resignation to be executed. This draft states that requirement only in sub. (1).

3. Regarding proposed ss. 179.04 (1) (b) and 179.82 (4), this treatment says that an agent for service of process can be a foreign entity whose address is the same as the address of the business office of the agent for service of process (i.e., the foreign entity). This seems circular. Is it what you intended? Also, is the identical address requirement intended to apply to both resident and foreign entities? As currently drafted, it only applies to foreign entities.

4. We have attempted to clarify the proposed treatment of ss. 179.76 (3) (e), 180.1161 (3) (e), and 183.1207 (3) (e). Please review these treatments and let us know if you desire any changes.

5. The language in proposed ss. 179.76 (1), 180.1161 (1) (a), and 183.1207 (1) (a) may be problematic because the conversion requirements under each of these sections may be different from or conflict with the requirements imposed under the statute that governs the type of entity to which the organization is converting. Do you want to specify that, in the event of such a conflict, the law governing the type of entity to which the organization is converting will govern? For example, proposed s. 180.1161 (1) (a) could read "Except as provided in par. (b), if that applicable law conflicts with the requirements under this section, that applicable law shall govern."

6. Regarding the treatment of s. 180.0501 (2), stats., we assumed that the first entity listed in the new language should be "limited partnership" rather than "limited liability partnership." Please let us know if we have misunderstood your intent.

7. Please see the revised treatment of ss. 180.1421 (1) and (2) (b), 180.1531 (1) and (2) (b). This treatment was necessary to resolve conflicts between your apparent intent and the requirements of s. 180.0141, stats.

8. Section 180.1504 (1) (b), stats., says a foreign corporation must obtain an amended certificate of authority if the foreign corporation changes the "period of its duration." To what does this refer? The duration of the foreign corporation? Of the original certificate of authority? Of the incorporation? The same concern arises under s. 181.1504 (1) (b), stats.

9. We changed the cross–reference in s. 180.1532 (1), stats., from s. 180.1510 to s. 180.0141 (5) (a), to reflect the new notice procedure created under the bill. Please let us know if this change was incorrect.

10. We changed the intro. to proposed s. 181.1531 (2r) to specify which notices the effective date provision covers. This eliminates any possible confusion over the effect of this provision on s. 181.1531 (4), stats. Please review the treatment to make sure that it is consistent with your intent.

11. We drafted proposed s. 183.1021 (2g) (b) to be parallel to the other provisions of this kind in the draft. Thus, this provision allows notification by publication if the notice to the principal office is returned as undeliverable *or if the records of the department do not contain an address for the principal office*. Please let us know if we have misunderstood your intent.

12. We did not include an effective date under proposed s. 183.1021 (2r) for notices that are published under ch. 985. Proposed s. 181.1531 (2r) does not contain such an effective date and one is probably not necessary, as a legal matter. See s. 985.09 (1), stats. Also, we changed the intro. to proposed s. 183.1021 (2r) to specify which notices the effective date provision covers. This eliminates any possible confusion over the effect of this provision on s. 183.1021 (4), stats. Please review the treatment to make sure that it is consistent with your intent.

13. We updated the cross–reference in proposed s. 183.1022 (1) to reflect the new effective date provision in proposed s. 183.1021 (2r). Please let us know if this cross–reference is correct.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261–4454
E–mail: robert.marchant@legis.state.wi.us

Rick A. Champagne
Senior Legislative Attorney
Phone: (608) 266–9930
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11/27/2001

The Next Economy

Assembly Bill 650

How the proposed changes relate to current law

I. Cross Entity Mergers and Conversion Statutes
   A. Wisconsin Law currently does not permit the direct conversion of an LLC (Limited Liability Corporation) to a domestic corporation, nor a domestic corporation to an LLC.
   B. This is not in line with other states. Currently it is easier to merge outside of the state rather than in the state.
   C. Merger fees currently are not uniform
   D. Current law does not address electronic filing and is ambiguous about the cost of filing in paper format

II. Limited Liability Company Statutes
   A. Current law states that a dissociation of a member in an LLC results in the dissolution of an LLC
   B. Current law is in line with old IRS statutes that have since been modified, however WI has yet to modify its statutes

III. Securities Statutes
   A. Currently anyone selling securities must be registered with DFI unless exempt from state registration by federal or state law.
   B. The state exemptions are mainly there to help small businesses
   C. The current exemptions have not changed for 30 years and have not evolved with the changing times

IV. Affected Business Statutes
   A. Current law requires business entities to appoint a registered agent who receives certain communications on behalf of the business organization. This agent may be a business entity rather than an individual. However, LPs or LLP's may not be appointed as registered agents.
   B. Currently DFI must "serve" a corporation with notice of grounds for administratively dissolving a corporation.

Assembly Bill 650 will streamline securities regulation and encourage additional corporate formations by reducing the costs of raising capital in Wisconsin. The changes can be separated into four primary areas of emphasis.

I. Cross Entity Mergers and Conversions
   A. Permit cross entity mergers and conversions (as in Delaware and other states.)
   B. All merger fees will be $150, except for a cooperative, which will be $30.
   C. Allow required documents to be filed electronically and clarify that DFI may charge more for documents filed in paper format

II. Limited Liability Company Modifications
   A. Eliminate the default provision in the WI. LLC Act that dissociation of a member in an LLC results in dissolution of an LLC

B. Recognize expulsion of a member if permitted by the LLC operating agreement provided the expelled member receives the fair value of its interest.
C. This allows companies to continue to operate without disruption

III. Securities Statutory Modifications
A. Increase to 25 (from the current 15) the number of security holders permitted under the exemption.
B. Increase to 25 (from the current 10) the number of offers permitted under the exemption within a 12 month period.
C. Amend the current "individual accredited investor "exemption to make it consistent with the federal definition and with the definition in other states.
D. Add to the list of exemptions from the securities agent licensing requirement an exemption for an agent acting exclusively for an issuer. (This is consistent with neighboring states)

IV. Business Statutes Modifications
A. Allow LLP's to act as registered agent for corporations, nonstock corporations, limited partnerships and limited liability companies.
B. Modify several business forms and processing operations at the Department of Financial Institutions including elimination of the billing process for name reservations and various signature requirements.

Provide for unilateral resignation of a registered agent under the corporation, limited liability company, limited partnership or limited liability partnership statutes as under the two partnership charters.

MEMORANDUM

November 29, 2001

TO: Joseph Kreye
Rick Champagne
Robert Marchant
Legislative Reference Bureau

FROM: Brian Pahnke
Department of Revenue

SUBJECT: Technical Memorandum on LRB 3766/1: Next Economy

The amended definition of "mergers of corporations" in section 77.21(1e) of the statutes refers to "the merger or combination of one or more corporations, nonstock corporations, limited liability companies, or limited partnerships, or any combination thereof." This language is unclear. It is our belief that the intent of this language is to define a merger as any combination of two or more of the listed entities. We do not believe that the proposed language can be interpreted to include a transaction involving only one entity. However, for clarity, the word "one" on line 9 of section 4 of the bill should be replaced with the word "two."

If you have questions regarding this technical memorandum, please contact Pam Walgren at (608) 266-7817.

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

December 4, 2001

MEMORANDUM

To: Representative Jeskewitz

From: Joseph T. Kreye, Legislative Attorney, (608) 266–2263

Richard A. Champagne, Legislative Attorney, (608) 266–9930

Robert J. Marchant, Legislative Attorney, (608) 261–4454

Subject: Technical Memorandum to **2001 AB–650** (LRB–3766/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

STATE BAR
of WISCONSIN®
5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Assembly Committee on Financial Institutions

From: Business Law Section

Date: December 6, 2001

Re: **Support Assembly Bill 650 - Next Economy Package**

The **Business Law Section supports Assembly Bill 650** and its Senate companion authored by Representatives Jeskewitz, Plale and Vrakas and Senators Meyer and Cowles. The Section believes this legislation will help Wisconsin enhance its business and economic climates and keep Wisconsin's business statutes competitive with those of other states.

The Business Law Section worked on the development of this legislation, which stems from Governor McCallum's Venture Capital Summit held earlier this year, and drafted the provisions on cross species mergers and conversions and additional provisions clarifying the Limited Liability Company statute (LLC).

Overall, Assembly Bill 650 will:

- Assist Wisconsin's business and economic climates through progressive business laws.

- Make it easier to transform from a Wisconsin Limited Liability Company to a Wisconsin corporation and vice verse under the merger provisions. Currently, Wisconsin law does not permit a merger from a Wisconsin Limited Liability Company into a Wisconsin corporation without going through another state and returning to Wisconsin (if the entity decided to return at all with the corporate situs). This is similarly true if you wish to go from a Wisconsin LLC to a Wisconsin corporation.

- Help reduce the complexity in the area of the law associated with mergers and conversions. It will also help keep that activity in Wisconsin rather than allow it to escape to other states with more attractive statutes.

- Encourage business conversion and merger activity to stay in Wisconsin and attract new business activity to the state.

- Clarify the current statute with regard to termination issues of LLC members by confirming that multiple ownership interests in Wisconsin LLCs are permitted.

- Retain Wisconsin's advantage over other states' Limited Liability Companies because our statutes would provide needed flexibility and keep us competitive with other states such as Delaware.

Why Merger and Conversion Provisions?
As the Business Law Section drafted the cross species merger and conversion provisions under Assembly Bill 650, this portion of the memo will specifically highlight the importance of these changes.

By way of background, Wisconsin passed its original Limited Liability Company enabling statute in 1993, effective January 1, 1994. In 1992 and 1993 it was the Business Law Committee of the State Bar which established a LLC subcommittee to draft the LLC statute. As that committee proceeded with its work, it was determined that including merger provisions—permitting mergers between LLCs and other entities such as corporations, limited partnerships and general partnerships—should be delayed. This was a common trend around the country as other states adopted their respective LLC statutes.

The thought was that because LLCs would be a new form of business entity in Wisconsin and, perhaps, individuals would not be as knowledgeable about the tax implications of mergers between various business entities, the prudent course was to delay enactment of those provisions. For example, a taxable situation might occur if you were to merge a LLC into a corporation. Further, if you were to merge a corporation into an LLC, limited partnership or general partnership it is most likely a taxable transaction as well. In the early 1990s, the primary benefits sought under LLCs were limited liability protection with partnership tax treatment so creating and enacting the LLC statute itself was paramount; merger provisions could wait.

That was just under ten years ago and limited liability companies are the most commonly used entity for business formations in Wisconsin today. Unlike the early 90s, individuals are knowledgeable on LLCs and now is the time for merger and conversion provisions so the needed flexibility for LLCs and other business entities is available.

Because Wisconsin does not have provisions providing for mergers and conversions, there is anecdotal evidence from practitioners that Wisconsin businesses are transferring to other states to do so.

> For example: a practitioner may tell a business that it is better to be a Delaware corporation than to sell the business or take it public. What happens in this scenario is that, since you cannot convert from a

Wisconsin LLC to a corporation directly, you merge a Wisconsin LLC with a Delaware LLC, which is permitted under Wisconsin law, and then the Delaware LLC converts to a Delaware corporation.

The end result in the above example is that the business has been able to merge and convert – albeit through a circuitous route – **but** Wisconsin loses the situs of these entities and the revenue and other economic aspects of retaining situs.

Wisconsin again loses out to Delaware when other provisions are considered, such as the termination of LLC members and how that is to be treated and whether there can be a multiple series of ownerships. Although many believe these provisions are already permitted under Wisconsin law, they have been clarified in Assembly Bill 650.

As already mentioned, Delaware enjoys the most prominence for being a state that is in the business of attracting business entity formations and transformations and deriving state revenue from being the situs of many US businesses. The statutory changes under Assembly Bill 650 are necessary to assure that Wisconsin retains the situs for many of its businesses which are now either beginning in Delaware or converting to Delaware situs.

Overall, Assembly Bill 650 enhances Wisconsin law by creating a more flexible statute, encouraging businesses to relocate to Wisconsin and giving Wisconsin taxpayers the opportunity to do business here.

If you have any questions, please feel free to contact Joe Boucher, Tom Nichols or Len Sosnowski of the Business Law Section.

For the above reasons, the Business Law Section urges your support of Assembly Bill 650.

Contact Jenny Boese, State Bar Senior Government Relations Coordinator, at 608/250-6045 or jboese@wisbar.org.

State of Wisconsin
Department of Financial Institutions

Scott McCallum, **Governor** John F. Kundert, **Secretary**

Testimony of
Secretary John F. Kundert

State Assembly Committee on Financial Institutions
Assembly Bill 650
December 6, 2001

As Secretary of the Department of Financial Institutions, I am pleased to be here this morning to testify on Assembly Bill 650. Thank you, Madame Chair, for inviting Deputy Secretary Terry Grosenheider and me to take part in this important hearing.

The legislative proposal before you today, known as the "Next Economy," is the direct result of the Governor's Summit on Venture Capital held earlier this year in Madison.

In total, the "Next Economy" proposal was designed to accomplish three things: 1) change the corporate fee structure to make our fees directly competitive with other states; 2) change our corporate statutes to make it easier for limited liability companies and domestic corporations to convert from one form to another, and to merge and restructure; and 3) change our securities law to promote capital formation.

While all three of these items were included in the State Assembly version of the budget, only the corporate fee component was recommended by the Budget Conference Committee and eventually adopted by the Wisconsin State Legislature. This action dramatically reduced the maximum fee for articles of incorporation from $10,000 to $100. It was, by itself, a tremendous accomplishment.

Now we want to finish the task. Since the budget was adopted, I and my staff at the Department of Financial Institutions have worked with the authors of this legislation, the Department of Revenue, the Business Law Section of the State Bar of Wisconsin and other organizations to craft the legislation before you today.

In particular, I would like to express my appreciation of the leadership displayed by you, Representative Jeskewitz, Representatives Jeff Plale and Dan Vrakas and Senators Mark Meyer and Rob Cowles. Further, I appreciate the time and the effort attorneys Joseph Hildebrandt, Joseph Boucher, Leonard Sosnowski and Thomas Nichols have devoted to the drafting of this legislation.

Office of the Secretary
Mail: PO Box 8861 Madison, WI 53708-8861 Courier: 345 W. Washington Ave. 5th Floor Madison, WI 53703
Voice: (608) 264-7800 Fax: (608) 261-4DFI TTY: (608) 266-8818 Internet: www.wdfi.org

Governor McCallum, at last week's Economic Summit, rightfully focused attention on the need to "Build Wisconsin" to create a stronger and more economically vibrant Wisconsin economy. This legislation will make it easier to achieve that goal.

AB 650 will make it easier for Wisconsin companies to truly remain Wisconsin companies, and it will make it easier for Wisconsin companies, particularly startup Wisconsin companies, to raise the capital they need to be successful.

Others who will follow who will discuss the details of this legislation and articulate the positive benefits of its' contents. Let me simply state that a strong and flexible corporate and securities statutes are as necessary to the long term health of the economy as are good roads and a strong energy and information infrastructure.

Our goal is to make Wisconsin the best place to form a business and create jobs. This proposal and your support for it will move us farther along that path.

Thank you for your hard work and attention. Terry and I would be happy to take any questions.

Mark Meyer

State Senator • 32nd Senate District

December 6, 2001

To: Members of the Assembly Financial Institutions Committee

From: Senator Mark Meyer

Re: Support of AB 650 ("The Next Economy" legislation)

Although I am unable to appear before the committee today due to a previous commitment, I wanted to share with you the following comments in support of AB 650.

This bi-partisan legislation, which I introduced along with Representative Jeskewitz and Senator Cowles and others, would enhance Wisconsin's ability to retain and attract businesses by updating and streamlining our business laws.

This legislation would make it easier for businesses to change their legal status in order to merge with other businesses and raise venture capital. It would also reduce the complexity, paperwork and fees business face when merging or converting their status.

This legislation was developed from recommendations made at the Governor's Summit on Venture Capital held earlier this year in Milwaukee to find ways to enhance Wisconsin's business climate.

Rather than seeing businesses escaping to other states with more competitive statutes, the Next Economy legislation will help make Wisconsin's business climate more attractive and help keep the businesses that are already here, as well as attract new ones.

We have already seen the signs of "brain drain" in Wisconsin. We must make it easier for businesses to operate or we will soon see significant signs of business drain.

Among the provisions contained in AB 650 is a streamlining of the state's securities provisions and clarifying language relating to our Limited Liability Corporations (LLCs) statutes.

AB 650 has the support of both the Business Law Section of the State Bar of Wisconsin and the Wisconsin Department of Financial Institutions (DFI).

I thank you for your consideration of this important legislation and urge your approval of the "Next Economy" legislation.

P.O. Box 7882, Madison, Wisconsin 53707-7882 • (608) 266-5490 • www.legis.state.wi.us

MEMBER:
Joint Committee on Finance

ROBERT L. COWLES

Wisconsin State Senator • 2nd Senate District

December 12, 2001

Senator Meyer, Chairperson
131 South State Capitol
Madison, WI 53705

Dear Chairperson Meyer,

I strongly urge you to support Senate Bill 333, the "Next Economy Package."

SB 333 is a result of recommendations from the February 28th Governor's Summit on Venture Capital that took place in Milwaukee earlier this year. The changes proposed in this bill will streamline securities regulation and encourage additional corporate formations by reducing the costs of raising capital in Wisconsin. These changes are needed now more than ever to attract new business to this state at a time when the economy is slowing.

The streamlining of securities statutes is a key provision of the bill. Under current law, an exemption can be provided from securities registration for any offer or sale of securities by an issuer if the total number of security holders after the transaction does not exceed 15. This provision has not been updated in thirty years. Implementing the increase to twenty-five will facilitate the ability of small businesses to raise needed equity or debt capital by eliminating the cost and cumbersome administrative burden associated with registration.

Other changes incorporated in the bill that will promote business growth in Wisconsin are:

- Limited partnerships, limited liability corporations, business corporations and nonstock corporations can merge into any other form of business entity, not just into the same form of entity.
- Business Organizations may appoint limited partnership, limited liability partnership, or limited liability company as a registered agent.
- Deletion of the requirement that articles of dissolution contain the number of votes cast on the question by each class of member entitled to vote.

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608-266-0484

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Fax 608-267-0304

Home:
300 W. St. Joseph Street, #23
Green Bay, WI 54301-2328
920-448-5092

In the wake of a slowing economy it is critical that we proactively work to bring businesses to Wisconsin and make sure the ones that are here do not leave. I feel that this package is a strong step in the right direction.

Again, I urge you to support this legislation.

Sincerely,

ROBERT L. COWLES

Cc Senator Moore
Senator Grobschmidt
Senator Hansen
Senator Ellis
Senator Huelsman
Senator Zien

State of Wisconsin • DEPARTMENT OF REVENUE

DIVISION OF RESEARCH AND POLICY • 2135 RIMROCK ROAD, 6-73 • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
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• http://www.dor.state.wi.us

M E M O R A N D U M

December 21, 2001

TO: Attorney Joseph Boucher

FROM: Pam Walgren

SUBJECT: AB 650 Definition of "Mergers of Corporations"

The Department of Revenue has requested a change to the amended definition of "mergers of corporations" contained in section 77.21(1e) of AB 650. The Department has requested that the phrase "merger or combination of one or more corporations..." be changed to "merger or combination of two or more corporations...."

Section 77.21 (1e) defines mergers of corporations for purposes of the real estate transfer fee. Section 77.25 (6) exempts mergers of corporations from the real estate transfer fee. The amended definition of mergers of corporations contained in AB 650 is limited to real estate transfer fee purposes and would not define a merger for income tax purposes, any more than the current law definition does.

cc: Tom Ourada
Brian Pahnke
Dennis Collier
Eng Braun
Mark Zimmer
Carol Held

PW:skr
t:\memo\pw\01pwmem.boucher.121.doc

Joseph W. Boucher
Wisconsin Business Entities as of January 1, 2001
NEW ENTITIES CREATED*

Type and Number of Entities Created	CY 94	CY 95	CY 96	CY 97	CY 98	CY 99	CY 00
Business corps	7281	7348	7165	6655	5867	5712	5627
Close corps	1051	1178	1059	1018	915	828	782
Cooperatives	11	16	14	12	16	8	10
Service corps	277	258	294	271	239	203	253
Close Svs corps	16	18	15	8	14	24	11
Corporations Only	8636 76.5%	8818 70.6%	8547 62.4%	7964 52.6%	7051 44.6%	6775 38.9%	6683 34.7%
LLC's Started Jan 1, 1994	2317 20.5%	3369 27.0%	3937 28.8%	5830 38.6%	7676 48.6%	9785 56.1%	11763 61%
Limited Partnerships	340 3.0%	287 2.3%	323 2.4%	364 2.4%	296 1.8%	279 1.6%	332 1.7%
LLP's Started Dec 11, 1995	0	19 .1%	880 6.4%	962 6.4%	787 5%	604 3.4%	504 2.6%
TOTAL Domestic Organizations Formed	11293	12493	13687	15120	15810	17435	19,282

WISCONSIN CUMULATIVE FOR-PROFIT ORGANIZATIONS

Corporations only	93245 94.5%	96312 91.5%	95531 87.2%	101434 82.9%	105949/ 78.5%	109,878 73.5%	113873 69%
LLC's	2074 2.1%	5338 5.1%	9345 8.5%	14941 12.2%	22621 16.8%	31,824 21.3%	42771 25.9%
Limited Partnerships	3314 3.4%	3564 3.4%	3837 3.5%	4147 3.4%	4424 3.2%	4624 3.1%	4876 2.9%
LLP's		19 --	900 .8%	1800 1.5%	2000 1.5%	3127 2.1%	3599 2.2%
TOTAL DOMESTIC FOR-PROFITS	98633	105233	109613	122322	134994	149,453	165119

*Excludes sole proprietorships and general partnerships

Roys, Lisa

From: Ourada, Thomas D
Sent: Wednesday, January 02, 2002 9:18 AM
To: Roys, Lisa
Cc: Anderson, David
Subject: AB 650

Lisa as a followup to my voicemail, attached is a memo that Pam sent to Joe Boucher. Joe and Pam spoke about DOR's concern with the definition of "mergers of corporations" being amended in section 77.21(1e) on page 9 of AB 650. The bill as drafted says that it is the merger or combination of one or more entities. We feel that for there to be a merger or combination, you have to have at least two entities merging or combining. Otherwise there is the potential for some to argue that one entity being sold could qualify for an exemption from the real estate transfer fee and that is not the intent - the exemption is meant for one entity merging or combining with another, not for a sale. Joe's concern was that we would use this definition to apply for income tax purposes and somehow create additional income tax liability for entities that are merging/combining. The memo from Pam states that the provisions in s. 71.21 (1e) relate to the real estate transfer fee and that they would not define a merger for income tax purposes. We hope that this clarifies things for Joe and the State Bar and we would therefore request that the appropriate change be made to s. 77.21(1e) to change "one" to "two". Give me a call to talk about this further. Thanks.

boucher.121.doc

For Immediate Release
January 28, 2002

For More Information Contact:
Rep. Suzanne Jeskewitz
(608) 266-3796

Wisconsin Advances Into the "Next Economy"

Proposed Legislation Will Encourage Retention of Wisconsin Businesses

The staggering economy has solicited a number of opinions on how to stimulate business and consumer spending. The State Legislature is currently considering one solution, which would enhance Wisconsin's business and economic climates through progressive business laws. Assembly Bill 650, dubbed "The Next Economy", was the result of recommendations from the Governor's venture capital summit in February 2001. AB 650 has bipartisan support from coauthors Representatives Suzanne Jeskewitz (R-Menomonee Falls), Jeff Plale (D- South Milwaukee) and Dan Vrakas (R- Hartland) in the Assembly and Senators Mark Meyer (D- La Crosse) and Robert Cowles (R- Green Bay) in the Senate. The Business Law Section State Bar of Wisconsin, the Department of Financial Institutions and the Department of Revenue worked together in the drafting of this bill.

Enacting the Next Economy package will ensure Wisconsin's business combination provisions are competitive or more attractive than those of other states. Currently there are other states, most notably Delaware, in which it is easier to complete business mergers and conversions. The Next Economy will bring Wisconsin up to par with these favorable business climates. What happens is that, since you cannot convert from a Wisconsin LLC to a corporation directly, you merge a Wisconsin LLC with a Delaware LLC, which is permitted under Wisconsin law, and then the Delaware LLC converts to a Delaware corporation. The end result in the above example is that the business has been able to merge and convert - albeit through a circuitous route - but Wisconsin loses the situs of these entities and the revenue and other economic aspects of retaining situs. Furthermore, businesses do not always convert back to a Wisconsin corporation and remain regulated under Delaware and we lose the benefits of regulation and taxation of the business. Wisconsin's Next Economy package will mimic the benefits of Delaware, thus retaining Wisconsin's businesses and encouraging other businesses to move here for mergers and conversions.

The Next Economy will streamline securities regulation and encourage additional corporate formations by reducing the costs of raising capital in Wisconsin. The changes can be separated into four primary areas of emphasis: 1) Cross entity mergers and conversions - make it easier for limited liability companies and domestic corporations to convert from one form to another and to merge and restructure, 2) Limited Liability Company modifications - clarifying treatment of termination of LLC members and multiple series of ownerships, 3) securities statutory modifications - change our securities law to promote capital formation, and 4) Business statutes modifications – necessary changes to update outdated statutes. The cross entity mergers and conversions and the securities statute modifications are the most significant to bolstering Wisconsin's

economy. These new progressive business laws will enhance Wisconsin's business and economic climate.

This package will not create any additional financial burdens on the state. The Department of Revenue anticipates a small loss with the exemption of the real estate transfer fee. However, a minimal increase in corporate annual report filing fees will make up for this loss. In addition, the Department of Financial Institutions anticipates this package as an annual revenue builder.

The Next Economy is a great piece of legislation for Wisconsin's business community. Overall, the Next Economy enhances Wisconsin law by creating a more flexible statute, encouraging businesses to relocate to Wisconsin and giving Wisconsin taxpayers the opportunity to do business here. It will help to create a stronger and more economically vibrant Wisconsin economy benefiting all of Wisconsin's citizens. Quick passage by both houses of the legislature as well as the Governor's signature show that our elected officials are doing what's best to stimulate a staggering economy.

###

Assembly Republican Majority
Bill Summary

AB 650: The Next Economy Package

Relating to: merger and conversion of business entities, exemptions from securities registration requirements and licensing requirements for securities broker-dealers and securities agents, registered agents for business entities, filing of document relating to certain business entities, administrative dissolution of business entites, amended certificates of authority for certain foreign business entities, granting rule-making authority, and making an appropriation.

By Representative Jeskewitz, Plale, Vrakas, Urban, LaFave, Walker, Lassa, Stone, Grothman, Hines, Krawczyk, Olsen, Duff, McCormick, Townsend; cosponsored by Senator Meyer, Cowles, Burke, Fitzgerald, Kanavas, Darling, Huelsman At the request of Governor McCallum

Date: January 29, 2002

BACKGROUND

This bill is a result of recommendations from the 2001 Governor's Summit on Venture Capital. These changes are needed now more than ever to attract new business in WI at a time when the economy is slowing. The following is current law as it relates to the four primary areas that the bill modifies.

I. Cross Entity Mergers and Conversion Statutes
   - A. Wisconsin Law currently does not permit the direct conversion of an LLC (Limited Liability Corporation) to a domestic corporation, nor a domestic corporation to an LLC.
   - B. This is not in line with other states. Currently it is easier to merge outside of the state rather than in the state. (Delaware has the most attractive laws).
   - C. Merger fees currently are not uniform.
   - D. Current law does not address electronic filing and is ambiguous about the cost of filing in paper format.

II. Limited Liability Company Statutes
   - A. Current law states that a dissociation of a member in an LLC results in the dissolution of an LLC.
   - B. Current law is in line with old IRS statutes that have since been modified, however WI has yet to modify its statutes.

III. Securities Statutes
   - A. Currently anyone selling securities must be registered with DFI unless exempt from state registration by federal or state law.
   - B. The state exemptions are mainly there to help small businesses.
   - C. The current exemptions have not changed for 30 years and have not evolved with the changing times.

IV. Affected Business Statutes
   - A. Current law requires business entities to appoint a registered agent who receives certain communications on behalf of the business organization. This agent may be a business entity rather than an individual. However, LPs or LLP's may not be appointed as registered agents.
   - B. Currently DFI must "serve" a corporation with notice of grounds for administratively dissolving a corporation.

SUMMARY OF AB 650

Assembly Bill 650 will streamline securities regulation and encourage additional corporate formations by reducing the costs of raising capital in Wisconsin. The changes can be separated into four primary areas of emphasis.

I. Cross Entity Mergers and Conversions
   A. Permit cross entity mergers and conversions (as in Delaware and other states).
   B. All merger fees will be $150, except for a cooperative, which will be $30.
   C. Allow required documents to be filed electronically and clarify that DFI may charge more for documents filed in paper format

II. Limited Liability Company Modifications
   A. Eliminate the default provision in the WI. LLC Act that dissociation of a member in an LLC results in dissolution of an LLC
   B. Recognize expulsion of a member if permitted by the LLC operating agreement provided the expelled member receives the fair value of its interest.
   C. This allows companies to continue to operate without disruption

III. Securities Statutory Modifications
   A. Increase to 25 (from the current 15) the number of security holders permitted under the exemption.
   B. Increase to 25 (from the current 10) the number of offers permitted under the exemption within a 12 month period.
   C. Amend the current "individual accredited investor "exemption to make it consistent with the federal definition and with the definition in other states.
   D. Add to the list of exemptions from the securities agent licensing requirement an exemption for an agent acting exclusively for an issuer. (This is consistent with neighboring states)

IV. Business Statutes Modifications
   A. Allow LLP's to act as registered agent for corporations, nonstock corporations, limited partnerships and limited liability companies.
   B. Modify several business forms and processing operations at the Department of Financial Institutions including elimination of the billing process for name reservations and various signature requirements.
   C. Provide for unilateral resignation of a registered agent under the corporation, limited liability company, limited partnership or limited liability partnership statutes as under the two partnership charters.

AMENDMENTS

PLEASE NOTE: Assembly Amendment 1 will be introduced on the Assembly Floor. It is necessary to make the bill revenue neutral.

Assembly Amendment 1 to Assembly Bill 650 makes five changes to the bill. The first is a technical amendment requested by the Department of Revenue. The second raises the domestic annual report fee for documents filed electronically from $25 to $30. The third raises the foreign corporation annual report fee by $20 (both e-filing and paper). The fourth is technical amendment requested by the Department of Financial Institutions. The fifth raises the foreign limited liability company annual report fee by $20 (both e-filing and paper). This exact same amendment is being introduced to the companion bill in the Senate.

FISCAL EFFECT

A fiscal estimate prepared by the Department of Financial Institutions indicates that the total estimated initial startup costs would be $821,6000 to update the corporate registration system to handle new transactions for consolidations and mergers, permit viewing of images and allow on-line access with secure processing of transactions. They anticipate a one-time revenue of $1,500,000 once the legislation goes into effect and an annual revenue of $75,000. There also indicate that additional revenue will be received because of the ease of obtaining services afforded by this legislation.

A fiscal estimate prepared by the Department of Revenue indicates that state revenues would decrease by $400,000 and county revenues by $100,000 because of the exemption from the real estate transfer fee.

PROS

1. The New Economy Package will help stimulate Wisconsin's economy.

2. This legislation will encourage additional corporate formations by increasing access to and reducing the costs of raising capital in Wisconsin.

3. This bill will encourage companies to stay here rather than go to Delaware for mergers and conversions.

CONS

1. Assembly Bill 650 raises filing fees that were already raised in the budget. This is necessary to not spend any GPR.

SUPPORTERS

Rep. Suzanne Jeskewitz, author; Sen. Mark Meyer, lead co-author; Rep. Dan Vrakas; Rep. Jeff Plale; Sen. Robert Cowles; Jack Kundert - Secretary, Department of Financial Institutions; Terry Grosenheider - Deputy Secretary, Department of Financial Institutions; Tom Oureda - Department of Revenue; Tom Nichols - State Bar of Wisconsin, Business Law Section; Joe Boucher - State Bar of Wisconsin, Business Law Section; Joe Hildebrant; Patricia Struck - Department of Financial Institutions; Jenny Boese - State Bar of Wisconsin, Business Law Section

OPPOSITION

No one registered or testified in opposition to this bill.

HISTORY

Assembly Bill 650 was introduced on November 27, 2001, and referred to the Assembly Committee on Financial Institutions. A public hearing was held on December 6, 2001. On December 6, 2001, the Committee voted 13-0-3 [Reps. Rhoades, Richards and Shilling were absent but asked to be recorded as voting for passage] to recommend passage of AB 650.

CONTACT: Erin Bilot, Office of Representative Suzanne Jeskewitz

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Signature

MEMORANDUM

To: Members of the State Assembly

From: Business Law Section

Date: January 29, 2002

Re: **Support Assembly Bill 650 - Next Economy Package**

The **Business Law Section supports Assembly Bill 650** authored by Representatives Jeskewitz, Plale and Vrakas and approved on a unanimous 13-0 vote by the Assembly Financial Institutions Committee.

The Business Law Section believes this bipartisan supported legislation will help Wisconsin enhance its business and economic climates and keep Wisconsin's business statutes competitive with those of other states.

Overall, Assembly Bill 650 will:

- Help reduce the complexity in the area of the law associated with mergers and conversions. It will also help keep that activity in Wisconsin rather than allow it to escape to other states with more attractive statutes.
- Encourage business conversion and merger activity to stay in Wisconsin and attract new business activity to the state.
- Retain Wisconsin's advantage over other states' Limited Liability Companies because our statutes would provide needed flexibility and keep us competitive with other states such as Delaware.
- Assist Wisconsin's business and economic climates through more progressive laws.
- Provide the mechanism to transform from a Wisconsin Limited Liability Company to a Wisconsin corporation and vice verse under the merger provisions.

For all the above reasons, the Business Law Section strongly urges your support of AB 650.

MEMBER
Joint Committee on Finance

ROBERT L. COWLES

Wisconsin State Senator • 2nd Senate District

NEWS COLUMN
FOR IMMEDIATE RELEASE
February 1, 2002

For more information contact
Senator Cowles or Jennifer
Halbur at 1-800-334-1465

COWLES INTRODUCES BILL TO HELP ECONOMY

MADISON-- I, along with a bipartisan group of legislators including Senator Meyer and Representatives Jeskewitz and Plale have introduced "The Next Economy Package." This package is a result of recommendations from the February 28, 2001 Governor's Summit on Venture Capital in Milwaukee.

The bill aims to make Wisconsin a more attractive environment for business by permitting cross entity mergers, clarifying limited liability corporation statutes regarding member interests and streamlining securities statutes to increase access to capital. These changes are needed to make Wisconsin competitive with other states.

Streamlining securities statutes is a key portion of this proposal. Under Current law, an exemption can be provided from securities registration for any offer or sale of securities by an issuer if the total number of security holders after the transaction does not exceed 15. This provision has not been updated for thirty years. Implementing the increase to 25 will facilitate the ability of small businesses to raise needed equity or debt capital by eliminating the cost and cumbersome administrative burden associated with registration.

Inadvertent violations of the Wisconsin statute by issuers dealing with states outside of Wisconsin lead to the perception that Wisconsin is a difficult environment in which to do venture capital business.

(m o r e)

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Some of the other changes incorporated in the bill include:

- Limited partnerships, limited liability corporations, business corporations and nonstock corporations can merge into any other form of business entity, not just into the same form of entity.
- Business Organizations may appoint a limited partnership, limited liability partnership, or limited liability company as a registered agent.
- Deletion of the requirement that articles of dissolution contain the number of votes cast on the question by each class of member'entitled to vote.

This bill, Senate Bill 333, passed the Senate Government Operations Committee on 12-19-O. Its Assembly companion, AB 650, passed the Assembly Committee on Financial Institutions on 12-6-O 1.

In the wake of the slowing economy it is critical that we proactively work to bring businesses to Wisconsin and make sure the ones that are here do not leave. I feel that this package is a strong step in the right direction.

###

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Laws in the Making

Legislation Incorporates Cutting-edge Business Combination Concepts

THE NEXT ECONOMY LEGISLATION PROVIDES GREATER FLEXIBILITY FOR MERGERS AND CONVERSIONS OF BUSINESS ENTITIES, CLARIFIES AND REFORMS WISCONSIN'S LIMITED LIABILITY COMPANY ACT, EXPANDS SECURITIES LAW PROVISIONS, AND ADOPTS SEVERAL TECHNICAL CHANGES IDENTIFIED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

by Joseph W. Boucher, Leonard S. Sosnowski & Thomas J. Nichols

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Sosnowski

Nichols

JOSEPH W. BOUCHER, U.W. 1978 CUM LAUDE, M.B.A., CPA, PRACTICES IN BUSINESS AND TAX LAW AND ESTATE PLANNING AT NEIDER & BOUCHER S.C., MADISON. BOUCHER ALSO TEACHES BUSINESS LAW AT THE UW-MADISON BUSINESS SCHOOL. HE ASSISTED IN DRAFTING THE WISCONSIN LLC ACT AND IS A COAUTHOR OF THE STATE BAR CLE PUBLICATION, *LLCs AND LLPs: A WISCONSIN HANDBOOK.*

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IT IS HOPED THAT GOV. SCOTT McCallum's proposed Next Economy Legislation, 2001 Senate Bill 333 and 2001 Assembly Bill 650 (NEL), will be passed by the Wisconsin Legislature early in 2002. Both the state Senate and Assembly unanimously passed the bills from committee during December 2001. The NEL is a bipartisan effort spearheaded by state Sens. Mark Meyer and Rob Cowles and state Reps. Sue Jeskewitz, Jeff Plale, and Dan Vrakas, with 21 other cosponsors. It provides greater flexibility for mergers and conversions of business entities, clarifies and reforms our Limited Liability Company (LLC) Act, expands securities law provisions, and adopts several technical changes identified by the Department of Financial Institutions (DFI). The State Bar of Wisconsin Business Law Section drafted portions of the NEL and supports its enactment. This article provides a brief overview of the legislation. If enacted, a more comprehensive review will be published.

Background

By 1995 all 50 states had passed LLC legislation. Wisconsin's statute became effective Jan. 1, 1994. Since then, the LLC has become the dominant form of new business organization in Wisconsin. From 1993 through 2001, LLCs have risen from 0 percent to well over 65 percent of the new entities formed.

When the original LLC legislation passed in 1993, it did not address so-called cross-species mergers and conversions. At that time no states addressed these. Since then, some other states, notably Delaware, have passed various forms of such legislation, and the ABA Business Law Section and the Uniform Law Commission have similar projects underway. In 2001 the State Bar of Wisconsin Business Law Section approved drafting and working to enact similar changes in Wisconsin, and the authors began to draft language for the cross-species merger and conversion provisions, as well as some other LLC modifications discussed below. With the inclusion of these provisions, the NEL would incorporate cutting-edge business combination concepts into Wisconsin's corporate and other entity statutes.

In February 2001, Gov. McCallum hosted Wisconsin's first Venture Capital Summit. The Summit drew hundreds of people and elicited ideas on how Wiscon-

sin could improve its venture capital environment. Many of the securities law changes included in the NEL can be directly attributed to the summit and the work of attorney Joe Hildebrandt of Foley & Lardner in Madison. In addition to thanking the governor, the bipartisan legislative authors and cosponsors, and others involved in this collaborative effort, the authors thank the DFI for all its work and the Legislative Reference Bureau for its assistance and drafting expertise.

Cross-species Mergers and Conversions

The Next Economy Legislation broadly permits cross-species mergers and conversions of domestic and foreign business entities.[1] Simply put, the NEL always will allow mergers between limited partnerships, regular chapter 180 business corporations, chapter 181 nonstock corporations, and limited liability companies, and allow such entities to convert from one form to another or change their state of domicile, through a relatively simple procedure.

This means, for example, that if business owners organized a limited partnership and then realized that a corporation would be preferable, they could convert the limited partnership into a corporation through a simplified procedure, instead of liquidating the partnership and forming a new corporation. Similarly, a corporation and LLC would be able to merge directly, or a foreign corporation could become a Wisconsin corporation without cumbersome extra steps. These procedures require the filing of documents with the DFI after obtaining the requisite shareholder or director approval. They also require filings with the county registers of deeds for all real estate located in Wisconsin. If a foreign entity is involved, the foreign jurisdiction's laws must permit the transaction and be complied with. As noted above, however, states are increasingly adopting similar statutes.

The NEL does not specifically address any of the tax consequences or

Next Economy Legislation Receives Bipartisan Support

BIPARTISAN-SUPPORTED LEGISLATION TO ENHANCE Wisconsin's business and economic climates is moving through the state Legislature. The bill, coined the Next Economy Package, stems from the Venture Capital Summit hosted by Gov. McCallum held in early 2001. The legislation has been introduced under companion bills, Senate Bill 333 and Assembly Bill 650, and is spearheaded by the governor and these legislators.


McCallum

Gov. Scott McCallum was sworn in as Wisconsin's 43rd governor on Feb. 1, 2001. McCallum most recently served as lieutenant governor, since 1986, and prior to that in the Wisconsin Senate, beginning in 1974. He earned a bachelor's degree in economics and political science from Macalester College in 1972 and a master's degree in international economics from Johns Hopkins University in 1974.


Meyer

Sen. Mark Meyer (D-La Crosse) was elected to the Senate (32nd District) in November 2000. He has a B.S. in political science from UW-La Crosse, and is a former member of the La Crosse City Council (1985-89) and the State Assembly (1992-2000). He currently chairs the Senate Committee on Universities, Housing and Government Operations.


Cowles

Sen. Robert Cowles (R-Green Bay) represents Wisconsin's 2nd Senate District. He was first elected to the Assembly in 1983 (resigned 4/21/87), then elected to the Senate in April 1987 in a special election, and has been reelected since 1988.


Jeskewitz

Rep. Suzanne Jeskewitz (R-Menomonee Falls) represents the 24th Assembly District. She was elected to the Assembly in 1996 and has been reelected since 1998. She chairs the Assembly Committee on Financial Institutions.


Plale

Rep. Jeffrey Plale (D-South Milwaukee) represents the 21st Assembly District. He was first elected to the Assembly in a March 1996 special election and has been reelected since November 1998.


Vrakas

Rep. Daniel Vrakas (R-Hartland) represents the 33rd Assembly District and has worked on numerous workforce/economic development issues since first being elected in 1990. He has chaired the Assembly Labor Committee (1995-2000; vice chair since 2001) and is currently a member of the Governor's Council on Workforce Investment (since 1999).

other business law considerations that must be part of the decision-making process for determining whether a business should so merge or convert. Such discussion is beyond the scope of this article. However, note that these transactions are not automatically tax free. In particular, conversions from "corporate" status to "partnership" status for tax purposes generally are taxable. Also, converting from "non-profit" status to "for-profit" status has significant tax and other ramifications. However, these NEL procedures allow business entities, in appropriate circumstances, to change their form or jurisdiction of organization without having to individually transfer all of their properties, assign or renegotiate all of their contracts, and reapply for all new licenses, and so on. Along the same lines, the NEL is clear that no pre-existing liabilities of whatever kind are modified or eliminated as the result of any such conversion or merger.

LLC Changes

The NEL eliminates a default provision in the Wisconsin LLC law that provides that the dissociation of a member will automatically result in the dissolution of the LLC[2] unless the remaining members unanimously agree to continue. Under the new law, an LLC would not need member approval to continue simply because a member dissociates. The legislation also allows members to agree to prohibit withdrawal. Under current law, a member could still withdraw, even though it might be a breach of contract. These provisions were included in the original LLC legislation to help assure partnership tax treatment. However, they are not necessary in light of the 1997 check-the-box regulations.

Finally, some practitioners argued that multiple classes of LLC ownership were not permitted under our current statute. While this is not the prevailing opinion, new section 183.0504 makes it clear that any number and type of multiple ownership interests are available.

Securities Laws

The key securities law modifications include: increasing to 25 from the current 15 the number of security holders permitted under the section 551.23(10) exemption; increasing to 25 from the current 10 the number of offers permitted under the exemption in section 551.23(11) during any 12-month period; amending the individual accredited investor exemption in section 551.23(8)(g) to make it consistent with the federal definition and with definitions in other states; and adding to the list of exemptions from the securities agent licensing requirement under section 551.31(1) an exemption for an agent acting exclusively for an issuer.

Other

The NEL includes other technical business statute modification language desired by DFI, including allowing LLPs to act as the registered agent for regular business corporations, nonstock corporations, limited partnerships, and limited liability companies; modifying several business forms and processing operations at DFI to include eliminating the billing process for name reservations and various signature requirements; and providing for unilateral resignation by registered agents of various business entities.

It is hoped that all of these changes will facilitate and increase business formations under Wisconsin law relative to other states. Certainly, they will provide much needed flexibility for business owners in Wisconsin.

Please contact your state senator and assembly representative to assure passage of this law.

Additional Resources

- Contact information for members of the Legislature is at its comprehensive Web site, http://www.legis.state.wi.us/.
- The State Bar's *Capitol Update* Web page has information on pending legislation on legal issues, http://www.wisbar.org/capup/.

Endnotes

[1]*See* Wis. Stat. sections 28-31, amending subchapter VIII of chapter 179; sections 50-81, amending subchapter XI of chapter 180; sections 104-130, amending subchapter XI of chapter 181; and sections 177-189, amending subchapter XII of chapter 183.

[2]*See* section 166 of both S.B. 333 and A.B. 650.

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February 4, 2002

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Paper for the Committee's February 5 Meeting

Attached is a paper, prepared by this office, relating to Senate Bill 333 and Assembly Bill 650. These bills, which are identical, are scheduled for executive action on Tuesday, February 5.

The bill is scheduled to begin at 9:30 a.m. in Room 412 East, State Capitol.

BL/sas
Attachment

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 5, 2002

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 650 and Senate Bill 333: Business Mergers and Conversions

Assembly Bill 650 and Senate Bill 333 are identical bills that would allow corporations and other types of business organizations to merge with, or convert to, other types of business entities. The bills would also make a number of other modifications to the statutes regarding business associations and securities transactions.

AB 650 was introduced on November 27, 2001, and referred to the Assembly Committee on Financial Institutions. On January 22, 2002, the bill was recommended for passage by that committee by a 13 to 0 vote. Assembly Amendment 1 was offered on January 28, 2002. The bill was referred to the Joint Committee on Finance on January 29, 2002.

SB 333 was introduced on December 6, 2001, and referred to the Senate Committee on Universities, Housing and Government Operations. On December 9, 2001, that committee recommended passage of the bill by a vote of 6 to 0. On January 8, 2002, the bill was referred to the Joint Committee on Finance.

SUMMARY OF BILLS

Mergers of Business Entities

Under current law, corporations may merge with other corporations and limited liability companies (LLCs) may merge with other LLCs. Current law does not have a procedure regarding mergers of limited partnerships. The bills would allow corporations and LLCs to merge with other types of business entities (domestic or foreign business corporations, LLCs, limited partnerships or

nonstock corporations) and would establish procedures allowing limited partnerships to merge with any of these types of business entities.

Mergers of Limited Partnerships

The bills would allow one or more domestic limited partnerships to merge with or into one or more other business entities if the merger is permitted under the applicable laws of the jurisdiction that governs each other business entity that is a party to the merger and each business entity approves the plan of merger in the manner required by the laws applicable to the business entity.

The plan of merger would have to set forth all of the following: (a) the name, form of business entity, and identity of the jurisdiction governing each business entity that is a party to the merger and the name, form of business entity, and identity of the jurisdiction of the surviving business entity with, or into, which each other business entity proposes to merge; and (b) the manner and basis of converting the interests in each merging business entity into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property in whole or in part.

In addition to the requirements identified above, the plan of merger could set forth any of the following: (a) amendments to the certificate of limited partnership or other similar governing document of the surviving business entity; or (b) other provisions relating to the merger.

After a merger is authorized, and at any time before the articles of merger are filed with the Department of Financial Institutions (DFI), the planned merger could be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other owners, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any business entity that is a party to the merger.

After a plan of merger is approved by each participating business entity, the surviving business entity would have to deliver to DFI the fee specified below and articles of merger that include all of the following: (a) the plan of merger; (b) a statement that the plan was approved by each participating business entity in the manner required by the laws applicable to each business entity; (c) the effective date and time of the merger, if the merger is to take effect at a time other than the close of business on the date of filing the articles of merger; and (d) other provisions relating to the merger, as determined by the surviving business entity. The fee for filing articles of merger would be $150, except that DFI, by rule, could specify a larger fee for filing articles in paper format.

A merger would have the following effects, which are similar to provisions that would apply to mergers of other types of business entities under the bills:

a. Each business entity that is a party to the merger would merge into the surviving business entity, and the separate existence of every business entity, except the surviving business entity, would cease.

b. If the merger is with or into a business entity under the laws applicable to which one or more of the owners of the business entity is liable for the debts and obligations of the business entity, the owner or owners would be so liable only for the debts and obligations accrued during the period or periods in which such laws are applicable.

c. The title to all property owned by each participating business entity would be vested in the surviving business entity without reversion or impairment, provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity transfers that interest to the business entity surviving the merger and executes any required real estate transfer fee return. The business entity surviving the merger would have to promptly record the instrument of conveyance in the office of the register of deeds for each county in which the real estate is located.

d. The surviving business entity would have all liabilities of each business entity that is party to the merger.

e. A civil, criminal, administrative, or investigatory proceeding pending by or against any business entity that is a party to the merger could be continued as if the merger did not occur, or the surviving business entity could be substituted in the proceeding for the business entity whose existence ceased.

f. The articles of incorporation, articles of organization, certificate of limited partnership, or other similar governing document, whichever is applicable, of the surviving business entity would have to be amended to the extent provided in the plan of merger.

g. The shares or other interests of each business entity that is party to the merger that are to be converted into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property would be converted, and the former holders of the shares or interests would be entitled only to the rights provided in the articles of merger or to their rights under the laws applicable to each merging business entity.

h. If the surviving entity is a foreign business entity, DFI would be the agent of the surviving foreign business entity for service of process in a proceeding to enforce any obligation of any business entity that is a party to the merger or the rights of the dissenting members or other owners of each business entity that is a party to the merger.

i. When a merger takes effect, any surviving foreign business entity would have to promptly pay to the dissenting shareholders of each domestic corporation or dissenting owners of each other domestic business entity that is a party to the merger the amount, if any, to which they

are entitled under current provisions regarding corporate dissenters' rights or under any law applicable to the other domestic business entity.

Under item "b", if a business entity in which the owners have limited liability (such as an LLC) merges into an entity in which the owners have some pass-through liability (such as a limited partnership), the owners of the new entity would potentially assume the liabilities and debts of the previous pass-through entity. Similar provisions would apply for mergers of other types of business organizations.

Mergers and Share Exchanges of Business Corporations

Under current law, one or more business corporations may merge into another business corporation if the board of directors of each corporation approves a plan of merger and, if required, its shareholders also approve the plan of merger. The bills would modify this provision to allow corporations to merge with or into one or more other business entities, not just with or into another corporation. In addition, the bills would specify that the merger would have to be permitted under the applicable law of the jurisdiction that governs each other merging business entity and that each such business entity approves the plan of merger in the manner required by the laws applicable to the business entity.

Currently, a business corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation approves a plan of share exchange and, if required, its shareholders also approve the plan of share exchange. The bills would modify this provision to allow a corporation to acquire the shares of another business entity, not just of another corporation. In addition, the bills would specify that the share exchange must be permitted under the applicable law of the jurisdiction that governs the other business entity and the other business entity must approve the plan of share exchange in the manner required by the laws of the jurisdiction that governs the other business entity.

Under current law, a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary. The bills would modify this provision to allow a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation or at least 90% of the outstanding interests of each class of any other subsidiary business entity to merge the subsidiary into the parent or the parent into the subsidiary.

Currently, the parent corporation may not deliver articles of merger to DFI for filing until at least 30 days after the date on which it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. The bills would reduce the 30-day period to 10 days.

Under current law, after a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or

acquiring corporation generally must deliver to DFI for filing articles of merger or share exchange setting forth the plan of merger or share exchange and a statement that the plan was approved in accordance with state law. The bills would also require the articles of merger or share exchange to set forth: (a) the effective date and time of the merger or share exchange, if the merger or share exchange is to take effect at a time other than the close of business on the date of filing the articles of merger; and (b) other provisions relating to the merger, as determined by the surviving business entity.

The bills would create a new provision specifying that when a corporate merger takes effect, if the merger is with or into a business entity under the laws applicable to which one or more of the owners of the business entity is liable for the debts and obligations of the business entity, the owner or owners are so liable only for the debts and obligations accrued during the period or periods in which such laws are applicable. This provision would not affect liability under any taxation laws.

The bills would also provide that when a corporate merger or share exchange takes effect, DFI would be the agent of any surviving foreign business entity of a merger or any acquiring foreign business entity in a share exchange, for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or other owners of each participating domestic business entity.

In addition, when a corporate merger or share exchange takes effect, any surviving foreign business entity of a merger or any acquiring foreign business entity in a share exchange would have to promptly pay to the dissenting shareholders of each domestic corporation or dissenting owners of each other domestic business entity that is a party to the merger or share exchange the amount, if any, to which they are entitled under the statutes relating to the rights of dissenting corporate shareholders or under any law applicable to such other domestic business entity.

Mergers of Nonstock Corporations

Currently, one or more nonstock corporations may merge into a nonstock corporation or a stock corporation, if the plan of merger is approved by the members or board of directors of the nonstock corporation. Under the bills, one or more nonstock corporations could merge with or into one or more other business entities if the plan of merger is approved and if the merger is permitted under the applicable law of the jurisdiction that governs each other participating business entity and each business entity approves the plan of merger in the manner required by the laws applicable to the business entity.

Under current law, a parent corporation that is a member with at least 90% of the voting rights in a subsidiary corporation may merge the subsidiary into itself without approval of the members of the parent or subsidiary. The parent may not deliver articles of merger to DFI for filing until at least 30 days after the date on which it mailed a copy of the plan of merger to each member of the subsidiary who did not waive the mailing requirement. The bills would modify this provision to permit a parent corporation that is a member with at least 90% of the voting rights in a subsidiary

corporation to merge the subsidiary into the parent or the parent into the subsidiary without approval of the members of the parent or the members or other owners of the subsidiary. In addition, the 30-day period for delivery of articles of merger would be reduced to 10 days.

Under current law, after a plan of merger is approved by the board of a nonstock corporation, and, if required, by the members and any other persons, the surviving or acquiring corporation must deliver to DFI for filing articles of merger that include all of the following information: (a) the plan of merger; (b) if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board; (c) if approval by members is required, information about the number of votes required to approve the merger and a statement that the number cast for the plan by each class was sufficient for approval by that class; and (d) if approval of the plan by a person other than the members or the board is required, a statement that the approval was obtained.

If approval by members is required to authorize the merger, the bills would also require the articles of merger to include a statement that the plan was approved by each other merging business entity in the manner required by the laws applicable to the business entity. In addition, in all cases, the articles of merger would have to include the effective date and time of the merger, if the merger is to take effect at a time other than the close of business on the date of filing the articles of merger and any other provisions relating to the merger, as determined by the surviving entity.

The bills would create a new provision under the section regarding the effect of mergers of nonstock corporations specifying that, if the merger is with or into a business entity under the laws applicable to which one or more of the owners of the business entity is liable for the debts and obligations of the business entity, the owner or owners would be so liable only for the debts and obligations accrued during the period or periods in which such laws are applicable. This provision would not affect liability under any taxation laws.

Currently, when a merger of a nonstock corporation takes effect, the surviving corporation has all of the rights, privileges, immunities and powers and is subject to all of the duties and liabilities of a nonstock corporation organized under state law. The bills would delete this provision and, instead, provide that the surviving business entity would have all liabilities of each business entity that is a party to the merger.

Under current law, a civil, criminal, administrative or investigatory proceeding pending *against* any nonstock corporation that is a party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased. The bills would modify this to make it applicable to proceedings pending *by or against* any business entity that is a party to the merger.

The bills would create a new provision under the section regarding the effect of mergers of nonstock corporations specifying that the shares or other interests of each merging business entity that are to be converted into shares, interests, obligations, or other securities of the surviving

business entity or any other business entity or into cash or other property would be converted, and the former holders of the shares or interests would be entitled only to the rights provided in the articles of merger or under laws applicable to each business entity that is party to the merger.

Mergers of LLCs

Under current law, unless otherwise provided in an operating agreement, one or more domestic or foreign LLCs may merge with or into one or more other domestic or foreign LLCs, with the surviving company being the LLC provided in the plan of merger. The bills would modify these provisions to allow one or more LLCs to merge with one or more other business entities if the merger is permitted under the applicable laws of the jurisdiction that governs each such other business entity and each business entity approves the plan of merger in the manner required by the laws applicable to the business entity.

The bills would create a new provision specifying that after a merger is authorized under these provisions, and at any time before the articles of merger are filed with DFI, the planned merger could be abandoned, subject to any contractual rights, without further action on the part of the shareholders or other owners, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the governing body of any business entity that is a party to the merger.

Currently, following a merger, the surviving LLC must deliver to DFI articles of merger, executed by each party to the plan of merger, that include all of the following: (a) the name and state or jurisdiction of organization of each LLC that is to merge; (b) the plan of merger; (c) the name of the surviving or resulting LLC; (d) a statement as to whether the management of the surviving company will be reserved to its members or vested in one or more managers; (e) the delayed effective date of the merger, if applicable; and (f) a statement that the plan of merger was approved by the member of the merging LLCs as required by state law. A merger takes effect upon the effective date of the articles of merger.

These provisions would be repealed. Instead, the articles of merger provided to DFI would have to include: (a) the plan of merger; (b) the effective date and time of the merger, if the merger is to take effect at a time other than the close of business on the date of filing the articles of merger; (c) a statement that the plan was approved by the members of each domestic LLC that is a party to the merger in accordance with state law, and by each other business entity that is a party to the merger in the manner required by the laws applicable to the business entity; and (d) other provisions relating to the merger, as determined by the surviving business entity.

Under present law, a merger of LLCs has the following effects:

a. The LLCs that are parties to the plan of merger become a single entity, which is the entity designated in the plan of merger as the surviving LLC.

b. Each party to the plan of merger, except the surviving LLC, ceases to exist.

c. The surviving LLC possesses all of the rights, privileges, immunities and powers of each merged company and is subject to all of the restrictions, disabilities and duties of each merged company.

d. All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger is vested in the surviving LLC without further act.

e. Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.

f. The surviving LLC has all of the liabilities and obligations of each of the parties to the plan of merger and any claim existing or action or proceeding pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.

g. The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.

h. The interests in an LLC that are to be converted or exchanged into interests, cash, obligations or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law.

i. The articles of organization of the surviving LLC are amended to the extent provided in the articles of merger.

The bills would repeal these provisions and, instead, specify that a merger would have the following effects. [These provisions are the same as those for limited partnerships outlined above.]

a. Every other business entity that is a party to the merger would merge into the surviving business entity, and the separate existence of every business entity, except the surviving business entity, would cease.

b. If the merger is with or into a business entity under the laws applicable to which one or more of the owners of the business entity is liable for the debts and obligations of the business entity, the owner or owners would be so liable only for the debts and obligations accrued during the period or periods in which such laws are applicable.

c. The title to all property owned by each merging business entity would be vested in the surviving entity without reversion or impairment, provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity transfers

that interest to the surviving entity and executes any required real estate transfer return. The surviving entity would have to promptly record the instrument of conveyance in the office of the register of deeds for each county in which the real estate is located.

d. The surviving business entity would have all liabilities of each business entity that is party to the merger.

e. A civil, criminal, administrative, or investigatory proceeding pending by or against any business entity that is a party to the merger could be continued as if the merger did not occur, or the surviving business entity could be substituted in the proceeding for the entity whose existence ceased.

f. The articles of organization, certificate of limited partnership, or other similar governing document, whichever is applicable, of the surviving business entity would be amended to the extent provided in the plan of merger.

g. The shares or other interests of each merging business entity that are to be converted into shares, interests, obligations, or other securities of the surviving entity or any other business entity or into cash or other property would be converted, and the former holders of the shares or interests would be entitled only to the rights provided in the articles of merger or to their rights under the laws applicable to each business entity that is a party to the merger.

h. If the surviving business entity is a foreign business, DFI would be the agent of the surviving entity for service of process in a proceeding to enforce any obligation of any business entity that is a party to the merger or the rights of the dissenting members or other owners of each business entity that is a party to the merger.

i. When a merger takes effect, any surviving foreign business entity would have to promptly pay to the dissenting shareholders of each domestic corporation or dissenting owners of each other domestic business entity that is a party to the merger the amount, if any, to which they are entitled under state law regarding the rights of dissenting shareholders or under any law applicable to the other domestic business entity.

Under current law, unless otherwise provided in an operating agreement, upon receipt of the notice of approval of a merger of LLCs, a member who did not vote in favor of the merger may, within 20 days after the date of the notice, voluntarily dissociate from the LLC and receive fair value for the member's interest in the LLC. The bills would modify this provision by also specifying that the rights afforded to shareholders, partners, or other owners of other business entities would be as required or provided by the laws applicable to the other business entities.

Conversions of Business Entities

Under current law, with the exception of certain corporations formed before July 1, 1953, business organizations are not permitted to convert to a different form of entity. Instead, businesses must undertake a series of steps that may include dissolution and subsequent re-creation.

Under the bills, a domestic limited partnership, business corporation, nonstock corporation or LLC could convert to another form of business entity if it satisfies the requirements outlined below and if the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the domestic entity is converting. "Business entity" would mean a domestic or foreign business corporation, LLC, limited partnership or nonstock corporation.

Similarly, other types of business entities would be allowed to convert to a domestic limited partnership, business corporation, nonstock corporation or LLC if they satisfy the requirements outlined below and if the conversion is permitted under the applicable law of the jurisdiction that governs the business entity. A business entity converting into another type of entity would have to comply with the procedures that govern the submission and approval of a plan of conversion of the jurisdiction that governs the business entity.

The plan of conversion would have to set forth all of the following: (a) the name, form of business entity, and the identity of the jurisdiction governing the business entity that is to be converted; (b) the name, form of business entity, and the identity of the jurisdiction that will govern the business entity after conversion; (c) the terms and conditions of the conversion; (d) the manner and basis of converting the shares or other ownership interests of the business entity that is to be converted into the shares or other ownership interests of the new form of business entity; (e) the effective date and time of the conversion, if the conversion is to be effective other than at the time of filing the certificate of conversion or otherwise; (f) a copy of the articles of incorporation, articles of organization, certificate of limited partnership, or other similar governing document of the business entity after conversion; and (g) other provisions relating to the conversion, as determined by the business entity.

Except with respect to taxation laws of each jurisdiction that are applicable upon the conversion of the business entity, when a conversion is effective, the business entity that is converted would no longer be subject to the applicable law of the jurisdiction that governed the organization of the prior form of business entity and would be subject to the applicable law of the jurisdiction that governs the new form of business entity.

If the conversion is from or to a business entity under the laws applicable to which one or more of the owners thereof is liable for the debts and obligations of such business entity, such owner or owners would be so liable only for debts and obligations accrued during the period or periods in which such laws are applicable. This provision would not affect liability under any taxation laws.

The following additional provisions would also apply when a conversion is effective:

a. The new business entity would continue to have all liabilities of the business entity that was converted.

b. The business entity would continue to be vested with title to all property owned by the business entity that was converted without reversion or impairment, provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity transfers that interest to the business entity surviving the conversion and executes any required real estate transfer fee return. The business entity surviving the conversion would be required to promptly record the instrument of conveyance in the office of the register of deeds for each county in which the real estate is located.

c. The articles of incorporation, articles of organization, certificate of limited partnership, or other similar governing document, whichever is applicable, of the business entity would be as provided in the plan of conversion.

d. All other provisions of the plan of conversion would apply.

After a plan of conversion is submitted and approved, the business entity that is to be converted would have to deliver to DFI for filing a certificate of conversion that includes all of the following together with a fee of $150: (a) the plan of conversion; (b) a statement that the plan of conversion was approved in accordance with the applicable law of the jurisdiction that governs the organization of the business entity; and (c) the registered agent and registered office, record agent and record office, or other similar agent and office of the business entity before and after conversion. DFI, by rule, could specify a larger fee for filing a certificate of conversion in paper format.

Any civil, criminal, administrative, or investigatory proceeding that is pending by or against a business entity that is converted could be continued by or against the business entity after the effective date of conversion.

DFI would be required to prescribe and furnish forms for an application for a certificate of conversion under the new provisions.

For business corporations, the bills would also modify existing statutes regarding rights of shareholders to dissent to allow a shareholder or beneficial shareholder to dissent from, and obtain payment of the fair value of his or her shares in the event of consummation of a plan of conversion. In addition, the bills would repeal a current statute allowing certain business corporations formed before July 1, 1953, to reorganize as nonstock corporations. The new general provisions regarding corporate conversions would instead apply.

For LLCs, the bills would specify that an affirmative vote, approval or consent of all members would not be required to convert an LLC to a new form of business entity under the new provisions.

Other Provisions Relating to LLCs

Under current law, an LLC is formed when the articles of organization become effective and DFI's filing of the articles of organization is conclusive proof that the LLC is organized and formed. The bills would also provide that the status of an LLC as a domestic LLC or as a foreign LLC registered to transact business in this state and the liability of any member of any such LLC would not be adversely affected by errors or subsequent changes in any information stated in any filing made under the LLC statutes. In addition, DFI's filing of the articles of organization of a foreign LLC would be considered the certificate of authority for that LLC to transact business in this state and would be considered notice of all other facts set forth in the registration statement.

The bills would also specify that, if an LLC dissolves, but its business continues without winding up and without liquidating the company, the status of the LLC before dissolution would continue to be applicable to the company as it continues its business, and the company would not be required to make any new filings. Any filings made by such an LLC before dissolution would be considered to have been filed by the company while it continues its business. If an LLC dissolves, any filings made by the company before dissolution would remain in effect as to the company and its members during the period of winding up and to the members during the period after the company's liquidation or termination with respect to the liabilities of the company.

The bills would create a new provision specifying that an LLC operating agreement may establish, or provide for the establishment of, designated series or classes of members, managers, or LLC interests that have separate or different preferences, limitations, rights, or duties, with respect to profits, losses, distributions, voting, property, or other incidents associated with the LLC.

Under current law, two provisions govern the powers of LLC members to withdraw from the company. First, unless an LLC operating agreement provides that a member does not have the power to withdraw by voluntary act from the LLC, the member generally may do so at any time by giving written notice to the other members, or on any other terms as are provided in the agreement. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the LLC may recover damages for breach of the agreement or as a result of the wrongful conduct and may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of a LLC for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term or completion of that undertaking is a breach of the operating agreement.

Under the second provision, which applies if a member acquired an interest in an LLC for no or nominal consideration, the member may withdraw from the LLC only in accordance with the operating agreement and only at the time or upon the occurrence of an event specified in the agreement. If the operating agreement does not specify the time or the event upon the occurrence of which the member may withdraw, such a member may not withdraw prior to the time for the dissolution and commencement of winding up of the LLC without the written consent of all members of the company.

The bills would modify these provisions by specifying that the second provision described above would apply to a member who owns an interest in an LLC as to which the power to withdraw is prohibited or otherwise restricted in the operating agreement. The bills would also specify that, unless otherwise provided in an operating agreement, in the case of an LLC that is organized for a definite term or particular undertaking, the operating agreement would be considered to provide that a member may not withdraw before the expiration of that term or completion of that undertaking.

Currently, an LLC is dissolved and its affairs must be wound up upon an event of dissociation of a member, unless any of the following applies: (a) the business of the LLC is continued by the consent of all of the remaining members within 90 days after the date on which the event occurs at which time the remaining members may agree to the admission of one or more additional members or to the appointment of one or more additional managers, or both; or (b) otherwise provided in an operating agreement. The bills would specify that this provision would only apply to LLCs organized before the bills' effective date.

Under current law, the laws of the state or other jurisdiction under which a foreign LLC is organized govern its organization and internal affairs and the liability and authority of its managers and members, regardless of whether the LLC obtained or should have obtained a certificate of registration under Wisconsin law. The bills would create an exception to this provision for foreign LLCs that have filed a certificate of conversion to become a domestic LLC. Such companies would be subject to the requirements of Wisconsin law governing domestic LLCs on the effective date of the conversion and would no longer be subject to the requirements of Wisconsin law governing foreign LLCs.

Tax Provisions

Income Tax

The bills would create new sections under the individual and corporate income tax administrative statutes specifying that, notwithstanding other provisions of state law regarding business mergers and conversions, the conversion of a business entity to anther form of business entity, or the merger of business entities, under the new provisions must be treated for state tax purposes in the same manner as the conversion or merger is treated for federal tax purposes. Similar provisions would be created in the statutes relating to the duties and powers of the Department of Revenue (DOR).

Real Estate Transfer Fee

Under current law, transfers of real property pursuant to mergers of corporations are exempt from the real estate transfer fee. "Mergers of corporations" means the merger or combination of two or more corporations or the combination of two or more LLCs. The bills would amend this definition to mean the merger or combination of one or more corporations, nonstock corporations, LLCs, or limited partnerships, or any combination thereof, under a plan of merger or a plan of consolidation permitted by the laws that govern the entities. Therefore, transfers of real property pursuant to these additional types of mergers would be exempt from the fee.

Similarly, the bills would create a new transfer fee exemption for conveyances of real property pursuant to the conversion of a business entity to another form of business entity under the new provisions, if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion.

The bills would also create a new exemption for conveyances of real property pursuant to partnerships registering as limited liability partnerships.

Sales Tax

The bills would create a new section in the sales tax administrative statutes specifying that, notwithstanding the new provisions regarding conversions of business entities, a business entity that converts to another business entity would be subject to the sales and use tax provisions applicable to liquidations, reorganizations and business entity formations.

Service of Process on Foreign Limited Partnerships

Currently, service of process on DFI under the statutes relating to foreign limited partnerships must be made by serving of duplicate copies of the process on the Department, together with a fee established by DFI. The Department must mail notice of the service and a copy of the process within 10 days addressed to the foreign limited partnership at its office in the state of its organization.

The bills would allow DFI to mail the notice to either the partnership's office in the state of its organization or its principal office, as appearing on the records of the Department from information supplied when the partnership registered to conduct business in this state.

Notice of Dissolution or Revocation of Certain Business Entities

Under current law, if DFI determines that one or more grounds exist for dissolving a domestic corporation, the Department must serve the corporation with written notice of the determination. Within 60 days after service of the notice is perfected, the corporation must correct

each ground for dissolution or demonstrate to the reasonable satisfaction of the Department that each ground does not exist. If the corporation fails to do so, DFI must administratively dissolve the corporation by issuing a certificate of dissolution that recites each ground for dissolution and its effective date. The Department must file the original of the certificate and serve a copy on the corporation.

The bills would modify the notice procedure by requiring DFI to "give" rather than "serve" written notice of the dissolution. The notice would have to be addressed to the registered office of the corporation. In addition, instead of filing the original of the certificate of dissolution and serving a copy of the certificate on a corporation that fails to address grounds for dissolution, DFI would be required to enter a notation in its records to reflect each ground for dissolution and the effective date of dissolution and to give the corporation written notice of those facts, addressed to the registered office of the corporation.

The bills would also specify that if a notice of dissolution is returned to DFI as undeliverable, the Department would have to again give notice to the corporation in the same manner. If the second notice is returned as undeliverable or if the corporation's principal office cannot be determined from DFI's records, the Department would have to give the notice by publishing a class two notice in the official state newspaper. Current law does not establish a procedure regarding undeliverable notices for most types of business entities.

The bills include similar modifications regarding foreign business corporations, nonstock corporations and LLCs.

A notice under these provisions would take effect at the earliest of the following: (a) when received; (b) five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed; or (c) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

Dissolution of Domestic Nonstock Corporations

Under current law, if DFI determines that one or more grounds exist for dissolving a nonstock corporation, the Department must give the corporation written notice of the determination by certified mail, return receipt requested, addressed to the corporation's registered agent and to the corporation's principal office. The bills would modify this provision by requiring the notice to be by first class mail rather than by certified mail and by only requiring the notice to be sent to the corporation's registered agent.

Currently, if the notices of administrative dissolution are both returned to DFI as undeliverable or if the corporation's principal office cannot be determined from the records of the Department, DFI must provide the notice by publishing a class two notice. Under the bills, if the initial notices are returned as undeliverable, DFI would be required to again give the corporation notice by first-class mail, addressed to the principal office of the corporation, as most recently

designated in the records of the Department. If the second notice is returned as undeliverable or if the corporation's principal office cannot be determined from DFI's records, the Department would have to give the notice by publishing a class two notice in the official state newspaper.

Under current law, upon receiving a notice of dissolution, a nonstock corporation is given 60 days to correct the grounds for dissolution. If satisfactory resolution of the grounds does not occur, DFI must administratively dissolve the corporation by issuing a certificate of dissolution that recites each ground for dissolution and its effective date. The Department must file the original of the certificate and provide notice to the corporation of the certificate in the same manner as a notice of determination. Under the bills, DFI would still be required to dissolve the corporation, but would no longer be required to issue a certificate of dissolution. Instead, the Department would have to enter a notation in its records to reflect each ground for dissolution and the effective date of dissolution and give the corporation notice of those facts.

Under current law, the articles of dissolution of a nonstock corporation for which approval by members is required must include all of the following: (a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and (b) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that dissolution was approved by a sufficient vote of the members of each class entitled to vote on dissolution. The bills would repeal this provision and, instead, require a statement that dissolution was approved by a sufficient vote of the members of each class entitled to vote on dissolution.

Amended Certificates of Authority

Currently, a foreign corporation authorized to transact business in Wisconsin must obtain an amended certificate of authority from DFI if it changes any of the following: (a) its corporate name or the fictitious name under which it has been issued a certificate of authority; (b) the period of its duration; or (c) the state or country of its incorporation. The bills would modify this provision to also require an amended certificate if the foreign corporation changes its date of incorporation.

Under present law, a foreign LLC authorized to transact business in this state must obtain an amended certificate of registration from DFI if the company changes any of the following: (a) its name; (b) the state or jurisdiction under whose laws it is organized; or (c) whether management of the company is vested in one or more managers. The bills would also require an amended certificate if the LLC changes the fictitious name under which it has been issued a certificate of registration or changes its date of organization.

Registered Agents

Under current law, every limited liability partnership, limited partnership, partnership, business corporation, nonstock corporation and LLC must continuously maintain in this state a registered office and registered agent. The registered agent receives certain communications on behalf of the business and receives service of process, and may be a natural person who resides in this state or a business entity. The types of business entities that may serve as a registered agent are not uniform in the statutes. In addition, limited partnerships and limited liability partnerships generally may not be appointed as a registered agent.

The bills would modify these provisions by allowing the following types of businesses to serve as a registered agent: business corporations, nonstock corporations, LLCs, limited partnerships and limited liability partnerships.

The bills would also specify that the registered agent of a limited liability partnership could resign by executing and filing with DFI a written statement that includes all of the following information, as applicable: (a) the name of the partnership; (b) the name of the agent; (c) if the agent is acting for a registered limited liability partnership, the street address of the partnership; (d) if the agent is acting for a foreign limited liability partnership, the partnership's current registered office and the mailing address of the partnership's current principal office; (e) a statement that the agent resigns; and (f) if the registered office is also discontinued, a statement to that effect. After the filing of such a statement, DFI would be required to mail a copy of the statement to the partnership at the address provided in the statement.

In addition, the bills would also create a new provision specifying that an agent for service of process for a limited partnership could resign by executing and filing with DFI a statement, in duplicate, containing all of the following information, as applicable: (a) the name of the partnership; (b) the name and current street address of the agent; (c) if the agent is acting for a domestic limited partnership, the address of the partnership's record office; (d) if the agent is acting for a foreign limited partnership, the address of the partnership's office in its state of organization; and (e) a statement that the agent resigns. DFI would be required to note on one of the duplicates filed the date of filing and to mail that duplicate to the limited partnership at the address provided above. A resignation under this provision would be effective 30 days after the date on which the statement is filed or the date on which the appointment of a successor agent is effective, whichever is earlier.

These provisions are similar to the current procedure for the resignation of agents for other types of business organizations.

Electronic Filing

Under current law, corporations may file documents with DFI by any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery or

electronic transmission. The bills would also permit electronic delivery of documents by limited liability partnerships, limited partnerships, nonstock corporations and LLCs.

Document Filing Fees

Under current law, the statutes specify numerous fees that must be paid by business organizations when they file documents with DFI. In some cases, a higher fee is specified for documents that are filed in paper format. The bills would allow DFI to specify a higher fee, by rule, if any of these documents are filed in paper format.

Currently, fees are charged when business organizations notify DFI of a change in their registered agent. The fees are generally $10 ($25 for limited partnerships). The bills would eliminate these fees.

Under present law, the fee for filing documents of merger varies depending upon the type of organization executing the merger. The fee is generally charged for each entity involved in the merger, and is $50 for business corporations and LLCs and $30 for nonstock corporations. The current merger fee for cooperatives is $10. The bills would uniformly set these fees at a flat $150 per merger, except the fee for mergers of cooperatives would be set at $30.

The bills would also create a $150 fee for filing a certificate of conversion under the new provisions.

Exclusive Use of Business Names

Under current law, a limited partnership, business corporation or nonstock corporation may reserve the exclusive right to use a name by filing an application with DFI or by making a telephone application and paying a fee ($10 for limited partnerships, $30 for business corporations and $20 for nonstock corporations). DFI must cancel a telephone application if the fee is not received within 15 business days after the application (10 days for foreign nonstock corporations). The bills would delete the requirement that DFI cancel a telephone reservation if the fee is not paid. DFI indicates this provision is no longer needed because the Department typically requires payment by credit card at the time a phone application is made.

Current law relating to limited partnerships also specifies that, once having reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 60-day period for which that applicant reserved that name. This provision would also be deleted. This change would make the statute for limited partnerships consistent with the statute for corporations.

Endorsement of Time of Receipt on Certain Documents Filed with DFI

Currently, upon receipt of a document for filing by DFI from a partnership, business corporation or LLC, the Department must stamp or otherwise endorse the date and time of receipt on the original document copy. The bills would eliminate the requirement that the time of receipt be endorsed on the document. The date of receipt would still have to be endorsed.

Exemptions from Securities Registration and Licensing Requirements

Under current law, a person may not offer or sell any security in this state unless a registration statement relating to the security is filed with the Division of Securities (DOS) within DFI. However, certain types of securities transactions are exempt from the registration requirement.

One of the exemptions under current law is for any offer or sale of securities to an individual accredited investor if the issuer reasonably believes immediately before the sale that the investor, either alone or with his or her representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment. "Accredited investor" is defined by DOS by rule. The bills would modify these provisions by defining "accredited investor" as under federal law [17 CFR 230.501 (a)] and specifying that any sale to an accredited investor would be exempt from registration.

Current law also provides an exemption from the registration requirement for any offer or sale of its securities by an issuer having its principal office in this state, if the aggregate number of persons holding all of the issuer's securities, after the securities to be issued are sold, does not exceed 15 (excluding accredited investors), if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, except to broker-dealers and agents licensed in this state, and if no advertising is published unless it has been permitted by DOS. The bills would increase from 15 to 25 the number of investors that could hold such securities without requiring registration.

An exemption is also currently provided for any transaction pursuant to an offer directed by the offeror to not more than 10 persons in this state (excluding accredited investors but including persons exempt under the previous provision) during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if the offeror reasonably believes that all the persons in this state are purchasing for investment, and no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state other than accredited investors. The bills would increase from 10 to 25 the number of investors that could be offered such securities without requiring registration.

The bills would create an exemption from the state licensing requirements that apply to securities broker-dealers and agents for an agent who is acting exclusively as an agent representing an issuer of securities and who makes offers and sales of the issuer's securities in transactions to

accredited investors or in transactions that are otherwise exempt from registration under a rule of DOS that specifically exempts transactions involving accredited investors and that is based on a model accredited investor exemption adopted by the North American Securities Administrators Association.

Administrative Funding for DFI

The bills would increase DFI's expenditure authority in its general program operations appropriation by $821,600 PR in 2002-03.

Effective Date

The bills would take effect on the first day of the 6th month beginning after publication.

SUMMARY OF ASSEMBLY AMENDMENT 1

Assembly Amendment 1 to AB 650 would modify the bill as follows:

a. A technical correction would be made in the definition of "mergers of corporations" under the real estate transfer fee statutes to specify that a merger would be the combination of two or more business entities. As drafted, the bill uses the phrase "one or more." Another technical correction would be made to add a cross reference regarding the fee for a corporate conversion.

b. Under the bill, the filing fee for a domestic corporate annual report would be $25, and DFI would be permitted to charge a higher fee, by rule, for reports filed in paper format. The amendment would specify a filing fee of $30 for reports filed electronically and $40 for reports filed in paper format. Under current law, the fee is $25 for reports filed electronically and $40 for paper reports.

c. The bill would set the filing fee for an annual report of a foreign corporation or LLC at $65, and authorize DFI to charge a higher fee, by rule, for reports filed in paper format. The amendment would specify a filing fee of $85 for reports filed electronically and $100 for reports filed in paper format. Under current law, the fee is $65 for reports filed electronically and $80 for paper reports.

FISCAL EFFECT

Because the bills' provisions would not take effect until six months after publication, no fiscal effect would occur in 2001-02. The estimates presented below assume publication in March, 2002, and an effective date of September 1, 2002.

Department of Financial Institutions

The Department of Financial Institutions indicates that the availability of on-line applications and the electronic imaging of documents is a prerequisite to implementation of AB 650/SB 333 without extensive reliance on overtime and additional staffing. To that end, the bills would appropriate one-time funding of $821,600 PR in 2002-03 for development and implementation of these capabilities as they relate to corporate mergers and conversions. Funding would be provided as shown below:

Application Development (Capability for expanded on-line filings; increased on-line access by customers to services; capability for web-based searches with images, etc.)	$534,000
Imaging & Document Conversion (Convert data from paper, microfiche, microfilm formats; convert three years' worth of records; image viewing licenses for corporations staff)	192,900
Hardware and Software (Acquire three servers & SQL software; miscellaneous electrical equipment)	94,700
Total	$821,600

DFI estimates that implementation of AB 650/SB 333 would result in increased fee revenues of approximately $1,250,000 in 2002-03, primarily from "built-up" demand for conversions or mergers that would be accommodated by the new provisions and on-line enhancements. In fiscal year 2003-04, these revenues are anticipated to drop to approximately $375,000, as fee revenue from the accumulated demand for transactions begins to abate. Additional fee revenues are estimated to level off at approximately $75,000 annually thereafter.

Under current law, all balances remaining in DFI's general program operations appropriation lapse to the general fund as GPR-earned at the close of each fiscal year. Given anticipated additional fee revenues of $1,250,000 in 2002-03 and the additional appropriation of $821,600 in the same year under AB 650/SB 333, the net impact on the general fund would be an increase in GPR-earned of $428,400. In the out years, the anticipated fee revenue enhancements would result in additional GPR-earned amounts.

Tax Effects

The bills would create exemptions from the real estate transfer fee for conveyances of real property pursuant to certain mergers or conversions. The Department of Revenue has estimated that the exemptions would result in revenue losses to the general fund of approximately $400,000 annually. Adjusting for the assumed September 1, 2002, effective date, the state revenue loss is estimated at $330,000 in fiscal year 2002-03 and at $400,000 annually thereafter. Because 20% of

the transfer fee is retained by the county in which the property is located, county revenues from the fee would decrease by an estimated $83,000 in 2002-03 and $100,000 annually thereafter.

The Department of Revenue indicates that, under current law and the bills, the Wisconsin franchise and income tax treatment of mergers and conversions would follow the federal income tax treatment and estimates that income tax revenues would not be affected. With regard to sales and use taxes, the sales and use tax treatment of transfers of assets in mergers and conversions would follow the provisions applicable to liquidations, reorganizations and business-entity formations. As under current law for similar transactions, the transfers would largely fall outside state sales tax statutes.

Fiscal Effect of Assembly Amendment 1

Assembly Amendment 1 would increase the filing fees for annual reports of corporations and LLCs. DFI estimates these changes would increase fee revenues by $330,000 in 2002-03 and $400,000 annually thereafter. These additional revenues would lapse to the general fund as GPR-earned at the close of each fiscal year.

Prepared by: Drew Larson and Rob Reinhardt

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1226/1dn
RJM:cjs:jf

February 4, 2002

Representative Jeskewitz:

Attached is the amendment you requested making technical changes and adjusting the language regarding the liability of owners of converting and merging business entities. Among other things, this amendment provides that the owners of a converting or merging business entity continue to be liable for the debts and obligations of the business entity that accrued before the merger or conversion and become liable for the debts and obligations of the new or surviving entity that accrue after the conversion or merger (provided liability for the debts and obligations exists under current law).

By contrast, the bill would instead require a different result in the context of merging business entities. This issue is best explained with a hypothetical. Assume entity A is an LLC (where the owners have limited liability) and entity B is a limited partnership (where at least one general partner has personal liability). If A merges into B, then, under the bill, the owners of A would assume personal responsibility for the liabilities of B, even if those liabilities accrued *before* the merger.

If you have any questions or would like any additional changes, please feel free to call.

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