

*All reviewed by state bar*

*Senator Meyer / Sue - Grant Huber Dale*

*Szykora  
companion bills -  
lead author*

## PROPOSED STATUTORY MODIFICATIONS FOR THE "NEXT ECONOMY" IN THE MAKING OF WISCONSIN

*\* Rick Champaign  
\* Rob Marchant*

The proposed legislation has four primary areas of emphasis:

1. Providing a framework for "cross entity" mergers
2. Modifying the dissolution of Limited Liability Companies (LLCs) to allow companies to continue operating without disruption
3. Streamline and simplify the securities statutes to increase access to, and reduce the cost of, capital.
4. Clarify, streamline and modernize existing practices of the Department of Financial Institutions.

### I. Cross Entity Mergers

*retain original date of formation -  
all contracts maintain*

Revise Chapters 178, 179, 180 and 183 to permit cross entity mergers as in Delaware and other states.

*Merge LLCs -  
instate: out of state  
Corp to LLC -  
entity to entity*

Wisconsin law requires that a new entity must be formed to merge an in-state entity with an out-of-state entity. While the merger is lawful, this requirement imposes an additional step not required under the laws of Delaware and other states. Wisconsin's "indirect" merger requirement is burdensome in comparison to other states and therefore may discourage potential investors concerned about unique complexities.

*currently: easier to merge outside of the state*

### II. Limited Liability Company Modifications

A. Eliminate the default provision in the Wisconsin LLC Act that dissociation of a member in an LLC results in dissolution of the LLC.

B. The default provision in the Wisconsin LLC Act provides that dissociation of a member results in dissolution of the LLC. This provision was put in place prior to the IRS providing a "check the box" tax regime. Since IRS regulations are now more flexible, a default provision of dissolution upon dissociation of a member is not necessary for the LLC to obtain taxation as a partnership. The adoption of the "check the box" regulations makes the dissolution default provision nothing more than a potentially costly trap for the unwary. Furthermore, the free-wheeling nature of venture capital investment requires the flexibility of easy entry and withdrawal without resulting in the dissolution of the LLC.

*change like IRS did  
more people in/out of an LLC*

C. Recognize expulsion of a member if permitted by the LLC operating agreement provided the expelled member receives the fair value of its interest.

*Joe Hildebrandt  
→ authors will meet if you want*

**NO DATE**

D. Currently, the Wisconsin statutes recognize only the withdrawal of a member, not the expulsion. Such a situation creates a serious problem when an LLC is forced to deal with an uncooperative or problematic member who refuses to withdraw.

E. As the law exists, this option is an unappealing and expensive one: judicial dissolution. Venture capital investment is by its very nature uncertain. The threat of being trapped in a LLC with a member who embezzles, breaches his fiduciary duty or otherwise refuses to act in the entity's best interest is not appealing. An LLC needs to have some freedom and flexibility in expelling a member that refuses to act in the LLC's best interest. Including a provision in the Wisconsin LLC Act that guarantees the expelled member fair value for its interest provides ample protection for the removed member's financial interest, while providing for the continued and uninterrupted existence of the LLC.

### III. SECURITIES STATUTORY MODIFICATIONS

A. Under sec. 551.23(10), Wis. Stats., increase to 25 (from the current 15) the number of security holders permitted under the exemption.

Section 551.23(10) in its present form provides an exemption from securities registration for any offer or sale of securities by an issuer with its principal place of business in Wisconsin if the total number of security holders after the transaction does not exceed 15, exclusive of persons listed under 551.23(8). The registration exemption is available on a self-executing basis, and although there are no specific disclosure requirements, anti-fraud provisions are applicable. The current exemption level of 15 permitted security holders has been unchanged for over 30 years, and an increase to 25 security holders will facilitate the ability of small businesses using the exemption to raise needed equity or debt capital.

B. Under sec. 551.23(11), Wis. Stats., increase to 25 (from the current 10) the number of offers permitted under the exemption.

The registration exemption is available for any transaction pursuant to an offer made to not more than 10 persons in Wisconsin (other than persons listed in 551.23(8)) during a twelve-month period. The registration exemption in its current form is based on a Uniform Securities Act of 1956 provision that has been in effect in Wisconsin since January 1, 1970, and in similar fashion to the above referenced proposed change to 551.23(10), the increase in the number of permitted offerees will facilitate the ability of small businesses using the exemption to raise needed equity or debt capital.

*limits make it more difficult than necessary - old statutes*

*reduces the cost of raising capital*

bring our statutes  
in line w/ fed  
neighboring  
states  
regulations

→ WI has a 2 tier  
test other  
states have 1

C. Amend the current "individual accredited investor" exemption in s. 551.23(8)(g) in the following respects to make the Wisconsin exemption consistent with the federal definition of that term and with the definition in other states:

- (i) delete the term "individual" in line 1;
- (ii) delete the so-called "investment sophistication test" language from line 2 to the end of the paragraph; and
- (iii) add a cross-reference to the federal definition of "accredited investor" in Rule 501(a) under Regulation D of the Securities Act of 1933.

D. Add to the list of exemptions from the securities agent licensing requirement under s. 551.31(1), Wis. Stats., a new subdivision (d) using the following language "(d) The agent is acting exclusively as an agent representing an issuer of securities and makes offers and sales of the issuer's securities in transactions exempted by s. 551.23(8)(g) or rule DFI-Sec 2.02(9)(n) under s. 551.23(18)."

Under current law, a person acting as a securities agent representing an issuer who receives compensation for such activities is required to be licensed unless the person qualifies for an exemption from licensure. This provision would include Wisconsin with several neighboring states that do not require securities agent licensure for persons involved in offerings to so-called "accredited investors," whether utilizing the NASAA Model Accredited Investor Exemption or in other offering contexts.

targeted for  
small  
businesses  
compensation

#### **IV. BUSINESS STATUTES MODIFICATION**

A. Registered limited liability partnerships ("LLP"), which now include several major law firms, are not qualified under Chs. 179, 180, 181 and 183 to act as registered agent. Under the proposed changes, LLP's would be allowed to act as registered agent for corporations, nonstock corporations, limited partnerships and limited liability companies. This responds to an emerging interest in utilizing the LLP as registered agent for its corporate clients.

B. Subsections 178.49(1), 180.0123(1) and 183.0111(1) provide that a document delivered for filing is effective at the close of business on the date it is received, unless the document specifies a time of day as its effective time. Accordingly, the department's endorsement of the time of receipt of a document has no function in setting an effective time for a document. Eliminating this requirement would make treatment of these

How keeping  
issues  
updating

documents consistent with the treatment of documents under Chapter 181 of the Wisconsin Statutes, repealed and recreated effective 1 Jan 1999.

~~4~~ Efficient bulk processing of incoming documents is impeded where manual intervention is necessary to recognize multiple receipt times during a single workday. Under the changes proposed, the department would be relieved of this burden which serves no operational purpose. The capacity for organizers of a new entity, or for an existing entity, to specify a time of day in a document as its effective time would continue exactly as provided under the present law.

*don't need  
so much  
info*

D. Under present law, articles of dissolution are not required to set forth the number of directors or incorporators voting for or against dissolution. In the interest of simplifying the content required for articles of dissolution, the proposed change eliminates the requirement to recite the number of members and their votes for and against dissolution and provides that it shall be sufficient to state that the members approved dissolution by a sufficient vote of each class of members entitled to vote on dissolution. The intent of this change is to make it less burdensome for nonstock corporations to file articles of dissolution.

E. A person may be named as registered agent for corporation, limited liability company, limited partnership or a limited liability partnership without their concurrence or even their knowledge. Provisions exist in Chs. 180, 181, 183 and 185 to allow a person to unilaterally resign their position as registered agent for a corporation, limited liability company or cooperative association. No comparable provisions exist, however, in Chs. 178 and 179 to allow a person to unilaterally resign as registered agent for a limited partnership or a limited liability partnership.

~~4~~ Unless the partnership makes a formal filing with the department to appoint a replacement agent, the current agent is saddled with the administrative burden imposed by the receipt and disposition of communications and service of process directed to the limited partnership or limited liability partnership. Even though a registered agent may wish to sever relations with the partnership, the registered agent has no independent means of doing so under present law. This proposal would provide such means.

G. Prior to a change in policy regarding payment of fees via credit card, an application for a Telephone Name reservation was acted on without first collecting the fee. The completed application was conveyed to the applicant as an acknowledgement of the disposition of the application and as a invoice for the service fee. Now that the department may accept payments via credit card, there is no operational need to create a receivable for this program. Conducting a receivables activity to support

this program is cumbersome, labor-intensive and unnecessary. The department seeks removal of the statutory provisions requiring it.

H. The document signature requirements and delivery methods set in Ch. 180 explicitly describe and provide for execution and transmission of instruments in electronic format. This proposal implants similar provisions in Chs. 178, 179, 181 and 183 of the statutes.

I. Under present law, a foreign corporation, foreign nonstock corporation, or foreign limited liability company may apply for an amended certificate of authority if it changes its state of incorporation or organization. A change in state of incorporation may also occasion a change in the date of incorporation or organization of the entity. The proposed changes will accommodate those circumstances by expressly providing that a licensed foreign entity may apply for an amended certificate of authority on the basis of either a change in the date of incorporation/organization or the state of incorporation/organization, or both.

J. Sections 180.1421, 180.1531 and 183.1021 require that the department shall "serve" a domestic or foreign entity with notice of grounds for administrative dissolution or revocation for certificate of authority. A supplement has been added with suggested statutory modifications that would allow the department to give notice, rather than serve, notices of grounds for administrative dissolution or revocation of certificate of authority. The modifications would align with the department's current practice with respect to its manner of giving notice to entities incidental to its administrative dissolution and revocation programs.

*state bar?  
need certified  
mail?  
hire pro se  
server?*

*disagreement  
w/ in dept.*



# SCOTT McCALLUM

Governor  
State of Wisconsin

## PROPOSED STATUTORY MODIFICATIONS FOR THE "NEXT ECONOMY" IN THE MAKING OF WISCONSIN

- I. **Cross Entity Mergers and Conversions** – Wisconsin law currently does not permit the direct conversion of an LLC to a domestic corporation, nor a domestic corporation to an LLC. Revise Chapters 178, 179, 180 and 183 to permit cross entity mergers and conversions as in Delaware and other states.
- II. **Limited Liability Company Modifications**
  - A. Eliminate the default provision in the Wisconsin LLC Act that dissociation of a member in an LLC results in dissolution of the 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.
- III. **Securities Statutory Modifications**
  - A. Under sec. 551.23(10), Wis. Stats., increase to 25 (from the current 15) the number of security holders permitted under the exemption.
  - B. Under sec. 551.23(11), Wis. Stats., 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 in s. 551.23(8)(g) 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 under s. 551.31(1), Wis. Stats., an exemption for an agent acting exclusively for an issuer.
- IV. **Business Statutes Modernization**
  - 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 a limited liability partnership statutes as under the two partnership chapters.

Narrative Informational article -  
Next Economy  
~~XXXXXXXXXX~~

Who wants it?

Why do we need it?

What will it do?

How much will it cost?



**State of Wisconsin**  
*Department of Financial Institutions*

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Scott McCallum, Governor

John F. Kundert, Secretary

**AB 650 AMENDMENT**

Section 1: This is a Department of Revenue requested technical amendment. (Memo attached.)

Section 2: Raises the domestic corporation annual report fee for documents filed electronically with the Department of Financial Institutions (DFI) from \$25 to \$30.

Section 3: Raises the foreign corporation annual report fee, regardless of method of delivery to DFI, by \$20.

Section 4: This is a DFI technical amendment to ensure that required fees for mergers and conversions are paid to the Department.

Section 5: Raises the foreign limited liability company annual report fee, regardless of method of delivery to DFI, by \$20.

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*Office of the Secretary*

Mail: PO Box 8861 Madison, WI 53708-8861

Voice: (608) 264-7800

Fax: (608) 261-4DFI

Courier: 345 W. Washington Ave. 5<sup>th</sup> Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: [www.wdfi.org](http://www.wdfi.org)



**STATE OF WISCONSIN**  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**

**LISA M. ROYS**  
Policy Advisor  
[www.wdffi.org](http://www.wdffi.org)

345 W. Washington Ave-5th Floor  
P.O. Box 8861  
Madison, WI 53708-8861

Office: (608) 266-0450  
Fax: (608) 261-8541  
E-mail: [lisa.roys@dfi.state.wi.us](mailto:lisa.roys@dfi.state.wi.us)

**DFI**

**MISSION**

"The Department of Financial Institutions is dedicated to protecting Wisconsin citizens through financial regulation and education. We are committed to ensuring the safety and soundness of Wisconsin financial institutions, protecting the investing public, and enhancing the viability and accessibility of the state's business record-keeping system."

B. Bronemus  
owner of ag. - dairy  
plant security act.  
Coop went out of business.

She's fine -

W. Wood -  
2 issues

- ①
- ② fees -

This fiscal year (02) no fiscal effect -  
some delayed date -  
no income / no expenses FIC 03  
\$100,000 - covers DOR's fiscal note

Don't escape your old debts when  
you merge or converge.

Raise fees in 04 (July, 2003)

Raise fees in a budget bill

Delayed date of fee raise?

Rev. neutral until  
2003-2004

Drew Larson  
fiscal bureau

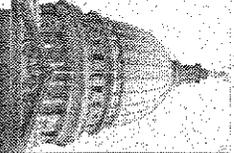
1.25 M - FY 2003  
821,600 -  
to 428,400 FY 2003  
Impact } GPR earned  
Net Impact } GPR earned

July 1<sup>st</sup> -  
June 30<sup>th</sup>

Effect on GPR earned increased  
View tax effect as a separate  
transaction  
GPR 330,000  
Net - almost even

## MOVING WISCONSIN "FORWARD" TO THE NEXT ECONOMY

### AB 650 WILL ASSIST WISCONSIN'S ECONOMIC AND BUSINESS CLIMATES.



The Business Law Section of the State Bar of Wisconsin supports the "Next Economy" package. The package began with a venture capital summit in February of 2001, hosted by Governor McCallum, and is continuing with introduction of Assembly Bill 650 and its Senate companion, bipartisan legislation authored by Senators Meyer and Cowles and Representatives Jeskewitz, Plale and Vrakas among others.

The Business Law Section drafted provisions relating to mergers and conversions of different types of legal business entities and other provisions clarifying the Limited Liability Company statute, a statute originally drafted by the State Bar's Business Law Committee in the early 1990s. The Section believes the Next Economy legislation will assist Wisconsin in keeping competitive with the statutes of other states.

### REASONS TO SUPPORT AB 650

- ◆ The Next Economy package is important to enhance Wisconsin's business and economic climates through progressive business laws.
- ◆ Enacting the Next Economy package will ensure Wisconsin's business combination provisions are competitive, indeed, more attractive than those of many other states and help keep businesses domiciled within the state and attract businesses to Wisconsin.
- ◆ Enacting the Next Economy package will streamline securities provisions in state statute.
- ◆ Merger and conversion provisions under the Next Economy package will help reduce the complexity in this area of the law, the paperwork and fees associated with these mergers and conversions.
- ◆ Enacting the Next Economy package will help retain Wisconsin's advantage over other states' Limited Liability Company laws because of the flexibility of our statute.
- ◆ Enacting the Next Economy package will confirm that multiple ownership interests in Wisconsin LLCs are permitted as well as help clarify the current statute with regard to termination rights of LLC members.

**The Business Law Section urges your support of Assembly Bill 650 to help move Wisconsin "Forward" to the Next Economy.**

**BUSINESS LAW SECTION**

The State Bar's Business Law Section has over 1,700 members. They are attorneys who practice business law – for both for-profit and non-profit corporations.

For More Information on the Next Economy Package Contact :

Joe Boucher, Esq.  
Neider & Boucher SC  
440 Science Dr # 300  
Madison, WI 53711-1064  
(608) 661-4500

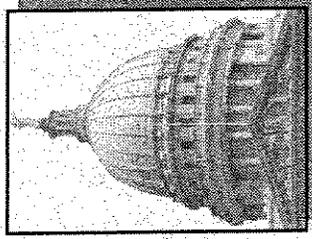
Tom Nichols, Esq.  
Meissner Tierney Fisher & Nichols SC  
111 E Kilbourn Ave 19th Fl  
Milwaukee, WI 53202-6633  
(414) 273-1300

Len Sosnowski, Esq.  
Foley & Lardner  
Verex Plaza  
Madison, WI 53701-1497  
(608) 257-5035

Jenny Boese  
State Bar of Wisconsin  
PO Box 7158  
Madison, WI 53707-7158  
(608) 250-6045

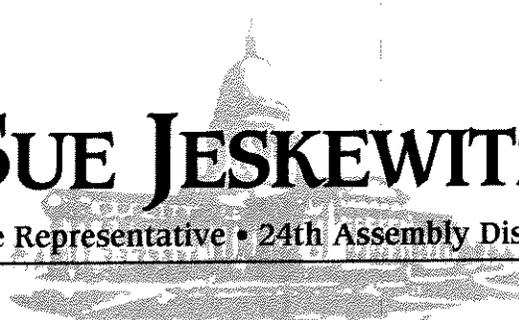
**BUSINESS LAW  
SECTION**

**THE NEXT  
ECONOMY**



PO Box 7158  
Madison, WI 53707-7158  
Phone: 608-250-3838  
Toll-Free: 1-800-444-9404  
Fax: 608-257-5502

**STATE BAR OF  
WISCONSIN**



# SUE JESKEWITZ

State Representative • 24th Assembly District

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Good morning. Thank you for allowing me to testify on Assembly Bill 650, also dubbed the Next Economy Package.

This bill is the result of recommendations from the 2001 Governor's Summit on Venture Capital held last February. These changes are needed now more than ever to attract new business in WI at a time when the economy is slowing. Current law in many of these instances hasn't been changed for many years.

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: Cross Entity Mergers and Conversion Statutes; Limited Liability Company Modifications; Securities Modifications; Other Business Modifications. I will not get into the specifics of any of these changes and will let the experts, represented today by the Department of Financial Institutions, the State Bar of Wisconsin and the Department of Revenue, explain the changes as well as answer any of your questions.

In light of our current economic situation and its future outlook, legislation such as this is needed as soon as possible. Therefore, I am going to ask that I can get your support in voting for this legislation in an executive session today.  
Thank you.

# 24TH ASSEMBLY DISTRICT

