

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to repeal* 180.0825 (2) (a), 180.0825 (5) (a), (b) and (c) to (h) and 180.1105
2 (1) (a) and (b); *to renumber and amend* 180.0602 (3); *to consolidate,*
3 *renumber and amend* 180.0825 (2) (intro.) and (b); *to amend* 179.02 (1),
4 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3),
5 180.0825 (1), 180.1106 (1) (b), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c),
6 180.1201 (title), 180.1201 (2), 180.1302 (4), 180.1805 (5), 181.1106 (2), 181.1161
7 (4) (c), 183.1205 (2) and 183.1207 (4) (c); *to repeal and recreate* 180.1130 (14);
8 and *to create* 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and
9 (bm), 180.1105 (1) (am), (bm) and (c) to (f) and 180.1201 (1) (d) of the statutes;
10 **relating to:** the authority of the board of directors of business corporations and
11 corporate committees; corporate shareholder notices and meetings; mergers,

1 conversions, and other business combinations; the transfer of corporate
2 property to certain affiliates; and naming limited partnerships.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the laws governing business corporations. It also makes changes to the laws governing limited partnerships, nonstock corporations, and limited liability companies. Significant changes include:

BUSINESS CORPORATIONS

Classes or series of stock

Under current law, a corporation's articles of incorporation may authorize the board of directors of the corporation to determine the preferences, limitations, and relative rights of a class or series of shares of stock. Generally, the board must set the terms of a class or series in an amendment to the articles of incorporation, which need not be approved by the shareholders. Current law permits the board to revise the terms by resolution, as long as no shares have been issued. After shares are issued, any such revision must be by amendment to the articles of incorporation.

This bill similarly permits the board to set and revise the distinguishing designation of a class or series. The bill also permits the board, at any time after the required articles of amendment are filed, to decrease the number shares of the applicable class or series (but not below the number of such shares that are outstanding), to eliminate the class or series (if no shares are outstanding), or to increase the number of shares of the class or series (but not beyond the number of such shares that are ... ~~*** [need to complete after obtaining comments concerning proposed s. 180.0602 (3) (b) 3.]~~ *authored*)

Shareholder notices and meetings

Current law contains several requirements pursuant to which a corporation must provide notice to a shareholder. In addition, a corporation's articles of incorporation and bylaws may also contain such requirements. This bill provides an exemption from any such requirement if a specified number of notices or dividend payments are returned to the corporation as undeliverable. The bill permits a shareholder to reinstate the notice requirements by delivering to the corporation a written statement setting forth the shareholder's current address. Current law does not have any similar exemption, although current law does permit a shareholder to waive any notice required under the corporate laws or the corporation's articles of incorporation or bylaws.

This bill permits a corporation's articles of incorporation or bylaws to specify the manner in which shareholder meetings will be conducted. The bill also sets default rules for the conduct of these meetings if the articles of incorporation or bylaws do not so specify. Under these default rules, a chairperson appointed by the board of directors must preside over the meeting. The chairperson must determine the order of business and time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all

shareholders. In addition, the chairperson must provide notice of when the polls close for each item voted upon at the meeting, except that if no such notice is provided the polls close upon final adjournment of the meeting.

Committees

Current law permits the board of directors to create committees, unless the articles of incorporation or bylaws provide otherwise. Currently, a committee must have at least two members. This bill allows a committee to have only one member.

With certain exceptions, the creation of a committee, appointment of members to it, and designation of alternative members currently must be approved by the greater of: 1) a majority of all directors currently in office; or 2) the number of directors required by the articles of incorporation or bylaws to take action (typically, a majority of directors present, if a quorum is present). This bill deletes the possible necessity for a majority vote of all directors currently in office, unless that requirement is specified in the articles of incorporation or bylaws.

Current law prohibits a committee from doing any of the following: 1) authorizing distributions; 2) approving or proposing to shareholders action that this chapter requires be approved by shareholders; 3) filling vacancies on the board of directors or, with certain exceptions, on any of its committees; 4) amending articles of incorporation without shareholder action; 5) adopting, amending, or repealing bylaws; 6) approving a plan of merger not requiring shareholder approval; 7) authorizing or approving reacquisition of shares, except according to a formula or method prescribed by the board of directors; or 8) authorizing or approving the issuance or sale or contract for sale of shares, or determining the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits prescribed by the board of directors. This bill deletes all of these restrictions, except items 2) and 5).

Mergers, share exchanges, and business combinations

Currently, when a corporation approves a merger or share exchange, it must file articles of merger or share exchange with the Department of Financial Institutions. Among other things, the articles of merger or share exchange must include the plan of merger or share exchange. This bill deletes this requirement and, instead, requires the articles of merger to state that a plan of merger or share exchange has been approved and adopted as required by law, that the plan is on file at the principle place of business of the surviving corporation, and that the surviving corporation will provide a copy of the plan, upon request and without cost, to any shareholder or, upon payment of the cost of producing the copy, to any other interested person. The bill also specifies other information that must be included in the articles of merger or share exchange.

Currently, a corporation may not engage in a business combination (including certain mergers) unless a specified supermajority of shareholders vote to approve the combination. However, this requirement does not apply if the shareholders receive a price for their shares that satisfies a specified formula. One factor in applying this formula is to determine the valuation date of the shares. Currently, the valuation date is defined as the later of the day before the date on which the shareholders' vote

concerning the combination or the day that is 20 days before the consummation of the combination. This bill specifies, instead, that the valuation date is the day before the first public announcement of the proposed business combination.

Current law restricts the ability of a corporation to engage in a business combination (including certain mergers) for three years following the "stock acquisition date," which is defined as the date on which any person first acquires at least 10% of the corporation's stock. Under this bill, the "stock acquisition date" is the *time* at which a person first acquires at least 10% of the corporation's stock.

With certain exceptions, the voting power of any person owning greater than 20% of a corporation's stock is currently limited to 10% of the full voting power of those shares, unless the articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This bill also permits the board of directors to specify that regular voting power will apply.

Under current law, if a shareholder dissents from certain mergers, share exchanges, or other business combinations, the shareholder may obtain payment of the fair value of his or her shares. Currently, the fair value is determined pursuant to several specified criteria. With limited exceptions, this bill provides an exemption from these dissenter's rights if the applicable shares are registered on a national securities exchange or quoted in the National Association of Securities Dealers, Inc. This exemption is identical to the exemption that applies generally to other dissenter's rights provisions.

Transfer of property to certain affiliates

Current law authorizes the board of directors of a corporation to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; to sell, lease, exchange, or otherwise dispose of less than substantially all of its property whether or not in the usual and regular course of business; and to encumber any or all of its property whether or not in the usual and regular course of business. Unless the articles of incorporation require otherwise, the board may take these actions without shareholder approval. This bill similarly permits the board to transfer any or all of its assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation, unless the transfer is in connection with a plan or action involving the sale, exchange, or disposal of all or substantially all of the assets of the corporation and requires shareholder approval.

OTHER CHANGES

Currently, the name of a limited partnership must contain the words "limited partnership" without abbreviation. This bill allows the name to include abbreviated versions of those words.

Under current law, when a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity (or when a business corporation enters into a share exchange), title to all personal property transfers, by operation of law, to the surviving entity. Title to real estate generally must be transferred by deed, which must be recorded in the appropriate office of the register of deeds. This bill deletes this special treatment for real estate.

As a result, under this bill, title to all property transfers, by operation of law, to the surviving entity.

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

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

2 179.02 (1) Shall contain, with or without abbreviation, the words "limited
3 partnership".

4 **SECTION 2.** 179.76 (4) (c) of the statutes is amended to read:

5 179.76 (4) (c) The business entity continues to be vested with title to all
6 property owned by the business entity that was converted without reversion or
7 impairment, ~~provided that, if the converting business entity has an interest in real~~
8 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
9 ~~transfer that interest to the business entity surviving the conversion and shall~~
10 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
11 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
12 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
13 ~~is located.~~

14 **SECTION 3.** 179.77 (6) (c) of the statutes is amended to read:

15 179.77 (6) (c) The title to all property owned by each business entity that is a
16 party to the merger is vested in the surviving business entity without reversion or
17 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
18 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
19 ~~that interest to the business entity surviving the merger and shall execute any real~~
20 ~~estate transfer return required under s. 77.22. The business entity surviving the~~

1 merger shall promptly record the instrument of conveyance under s. 59.43 in the
2 office of the register of deeds for each county in which the real estate is located.

3 SECTION 4. 180.0502 (3) of the statutes is amended to read:

4 180.0502 (3) If the name of a registered agent changes or if the street address
5 of his or her a registered agent's business office, he or she changes, the registered
6 agent may change the name of the registered agent or street address of the registered
7 office of any corporation for which he or, she, or it is the registered agent by notifying.
8 To make a change under this subsection, the registered agent shall notify the
9 corporation in writing of the change and by signing, either manually or in facsimile,
10 and delivering deliver to the department for filing a signed statement that complies
11 with sub. (2) and recites that the corporation has been notified of the change.

12 SECTION 5. 180.0602 (3) of the statutes is renumbered 180.0602 (3) (a) and
13 amended to read:

14 180.0602 (3) (a) After the articles of amendment are filed under sub. (2) and
15 before the corporation issues any shares of the class or series that is the subject of
16 the articles of amendment, the board of directors may alter or revoke any the
17 distinguishing designation of the class or series and the preferences, limitations, or
18 relative rights described in the articles of amendment, by adopting another
19 resolution appropriate for that purpose. The corporation shall file with the
20 department revised articles of amendment that comply with sub. (2). ~~A- Except as~~
21 provided in par. (b), a distinguishing designation, preference, limitation, or relative
22 right may not be altered or revoked after the issuance of any shares of the class or
23 series that are subject to the distinguishing designation, preference, limitation, or
24 relative right, except by amendment of the articles of incorporation under s.
25 180.1003.

In connection with any such change

← insert

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****NOTE: (A) I did not add the proposed language "the number of shares of the class or series" in this paragraph because it is governed more specifically by proposed par. (b) below. Please let me know if I have misunderstood your intent. It wasn't clear to me whether you intend to treat changes in the number of shares similarly to changes currently permitted under s. 180.0602 (3), stats. (B) Please let me know if you think the language "Except as provided in par. (b)" in the last sentence is unnecessary.

(but not below the number of shares for sub. 2)

1 SECTION 6. 180.0602 (3) (b) of the statutes is created to read:
2 180.0602 (3) (b) 1. Except as otherwise provided in this subdivision, after the
3 articles of amendment are filed under sub. (2), the board of directors may decrease
4 the number of shares of the class or series that is the subject of the articles of
5 amendment by adopting another ^{board} resolution appropriate for that purpose. The
6 shares specified in the resolution shall resume their prior status. The board of
7 directors may not decrease the number of shares under this subdivision below the
8 number of such shares that are then outstanding.

ed

****NOTE: (A) I did not add "unless otherwise provided in any such resolution or resolutions" because, as drafted, I don't think resolutions under par. (a) deal with changes in the number of shares. Please let me know if you disagree. (B) Please let me know if you intend any additional provisions from par. (a) to apply under this subdivision. (C) I broke out the elimination of a class or series into its own subdivision. See subd. 2. below.

before such designation, primarily limitations or related (4/24)

9 2. After the articles of amendment are filed under sub. (2), if no shares of the
10 class or series that is the subject of the articles of amendment are then outstanding,
11 the board of directors may eliminate from the articles of incorporation all matters set
12 forth in the articles of amendment with respect to that class or series by adopting
13 another resolution for that purpose. The board of directors shall prepare a certificate
14 setting forth the content of any resolution under this subdivision, stating that none
15 of the authorized shares of the class or series are outstanding, and stating that no
16 such shares will be issued under the articles of amendment and shall deliver the
17 signed certificate to the department for filing. A resolution under this subdivision
18 takes effect upon filing of the certificate by the department and has the effect of

1 eliminating from the articles of incorporation all matters set forth in the articles of
2 amendment with respect to the applicable class or series.

****NOTE: (A) Please let me know if this subdivision does not accomplish your
intent. I tried to stay very close to the language provided to me. (B) See notes "A" and
"B" under subd. 1. above. } jc

3 3. Except as otherwise provided in this subdivision, after the articles of
4 amendment are filed under sub. (2), the board of directors may increase the number
5 of shares of the class or series that is the subject of the articles of amendment by
6 adopting another resolution appropriate for that purpose. The board of directors
7 may not increase the number of shares under this subdivision to be greater than ...

8 ~~****~~ *the total number of authorized shares of the class or series*
[must complete per note "B" below].

****NOTE: (A) See notes "A" and "B" to subd. 1. above. (B) Your instructions noted
that any increase in the number of shares may not be above "the total number of
authorized shares of the class or series." I don't understand your intent. The articles of
amendment set the number of shares of a series or class that are created. I assume this
subdivision is intended to allow the board to increase that number, but subject to what
limits? The limits under s. 180.0601, stats.? Please let me know.

9 **SECTION 7.** 180.0706 (title) of the statutes is amended to read:

10 **180.0706** (title) **Waiver of and exemption from notice.**

11 **SECTION 8.** 180.0706 (3) of the statutes is created to read:

12 180.0706 (3) (a) Except as provided in par. (b), any notice required to be given
13 by a corporation to a shareholder under this chapter is not required to be given if any
14 of the following applies:

15 1. Notice of 2 consecutive annual meetings, and all notices of meetings during
16 the period between these annual meetings, have been sent to the shareholder at the
17 shareholder's address as shown on the records of the corporation and have been
18 returned as undeliverable.

19 2. All, but not less than 2, payments of dividends on securities during a
20 one-year period, or 2 consecutive payments of dividends on securities during a period

1 of more than one year, have been sent to the shareholder at the shareholder's address
2 as shown on the records of the corporation and have been returned as undeliverable.

3 (b) If a shareholder to whom par. (a) applies delivers to the corporation a
4 written notice containing the shareholder's current address, then, beginning 30 days
5 after receipt of the notice by the corporation, the requirement that notice be given
6 to the shareholder is reinstated, until such time as par. (a) may again apply.

7 **SECTION 9.** 180.0708 of the statutes is created to read:

8 **180.0708 Conduct of meeting.** Unless the articles of incorporation or bylaws
9 provide otherwise, every meeting of the shareholders shall be conducted as follows:

10 (1) A chairperson shall preside over the meeting. The chairperson shall be
11 appointed by the board of directors.

****NOTE: Shortened by relying on the (intro.). *u*

12 (2) The chairperson shall determine the order of *u* business and the time of *decide at*
13 adjournment and may establish rules for the conduct of the meeting which the
14 chairperson believes are fair to the interests of all shareholders.

15 (3) The chairperson shall announce at the meeting the time at which the polls
16 will close for each matter voted upon at the meeting. The polls close at the announced
17 time, except that, if no such announcement is made, the polls close upon final
18 adjournment of the meeting. After the polls close, no ballots, proxies, or votes, or
19 revocations or changes thereto, may be accepted.

****NOTE: Please review this subsection. It was unclear from the proposed
language whether the chairperson was to announce the closing of the polls or provide
notice as to when the polls will close. From the additional information that you provided,
I gathered that the intent was to provide notice. Please let me know if I was mistaken.

20 **SECTION 10.** 180.0824 (3) of the statutes is amended to read:

21 180.0824 (3) Except as provided in ss. 180.0825 (2) and (3), 180.0831 (4) and
22 180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote

1 of a majority of directors present is the act of the board of directors or a committee
 2 of the board of directors created under s. 180.0825, unless the articles of
 3 incorporation or bylaws require the vote of a greater number of directors.

****NOTE: Treatment of this section was necessitated by proposed s. 180.0825 (2)
 below. If the treatment of that section is changed, then this treatment may also need to
 be changed or deleted.

ok w
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4 **SECTION 11.** 180.0825 (1) of the statutes is amended to read:

5 180.0825 (1) Unless the articles of incorporation or bylaws provide otherwise,
 6 a board of directors may create one or more committees, appoint members of the
 7 board of directors to serve on the committees and designate other members of the
 8 board of directors to serve as alternates. Each committee shall have ~~2 or more~~
 9 members at least one member. Unless otherwise provided by the board of directors,
 10 members of the committee shall serve at the pleasure of the board of directors.

****NOTE: Using the term "committee" to refer to a single individual is not standard
 English usage. As result, it makes certain provisions where the term "committee" is used,
 such as s. 180.0824 (1) (b), (2) (b), and (3), unusual to apply. They still work, they are just
 odd. To some extent, this problem currently exists in the case of a committee with two
 members. However, if you would like to call a committee of one something other than a
 committee (for example, a "special designee"), please let me know and I will adjust this
 provision and other affected statutes accordingly.

ok w
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11 **SECTION 12.** 180.0825 (2) (intro.) and (b) of the statutes are consolidated,
 12 renumbered 180.0825 (2) and amended to read:

13 180.0825 (2) Except as provided in sub. (3), the creation of a committee,
 14 appointment of members to it and designation of alternate members, if any, shall be
 15 approved by the ~~greater of the following:~~ (b) The number of directors required by the
 16 articles of incorporation or bylaws to take action under s. 180.0824 (3).

****NOTE: It was unclear what was meant by "A majority of a quorum of the board."
 I assumed that you intended to require a majority vote of the directors present, as long
 as there is a quorum. If you meant a majority vote of the number required for a quorum,
 regardless of the number of directors present, please let me know. Also, if that is what
 you meant, then I think that number will always be less than the number currently
 permitted under s. 180.0825 (2) (b), stats.

ok
 good

17 **SECTION 13.** 180.0825 (2) (a) of the statutes is repealed.

1 SECTION 14. 180.0825 (5) (a), (b) and (c) to (h) of the statutes are repealed.

2 SECTION 15. 180.0825 (5) (am) and (bm) of the statutes are created to read:

3 180.0825 (5) (am) Approve or recommend to shareholders for approval any
4 action or matter expressly required by this chapter to be submitted to shareholders
5 for approval.

****NOTE: Deleted "adopt" because it didn't seem to make sense to refer to adopting
an action.

OK found

6 (bm) Adopt, amend, or repeal any bylaw of the corporation.

7 SECTION 16. 180.1105 (1) (a) and (b) of the statutes are repealed.

8 SECTION 17. 180.1105 (1) (am), (bm) and (c) to (f) of the statutes are created to
9 read:

10 180.1105 (1) (am) The name and state of incorporation of each corporation that
11 is a party to the merger or share exchange.

12 (bm) That a plan of merger or share exchange has been approved and adopted
13 by each corporation that is a party to the merger or share exchange as required under
14 s. 180.1103 or 180.1104, as applicable.

15 (c) The name of the surviving or acquiring corporation.

by the parties to the merger

16 (d) In the case of a merger, any amendments in the articles of incorporation of
17 the surviving corporation that are intended to take effect upon the merger or, if there
18 are no such amendments, a statement that the articles of incorporation of the
19 surviving corporation or another corporation that is a party to the merger will be the
20 articles of incorporation of the surviving corporation.

****NOTE: (A) It is unclear how these provisions relate to ss. 180.1001 to 180.1006,
which also deal with amending the articles of incorporation. (B) Due to the use of the
passive voice, it is also unclear who or what "intends" the amendments referred to in this
paragraph (i.e., are the amendments intended by the shareholders, by the board, or by
someone else?). Please let me know if you would like to clarify either of these issues.

1 (e) That the executed plan of merger or share exchange is on file at the principal
2 place of business of the surviving or acquiring corporation.

3 (f) That the surviving or acquiring corporation will provide a copy of the plan
4 of merger or share exchange, upon request and without cost, to any shareholder of
5 a corporation that was a party to the merger or share exchange or, upon payment to
6 the surviving or acquiring corporation of an amount equal to the cost of producing
7 the copy, to any other interested person.

8 SECTION 18. 180.1106 (1) (b) of the statutes is amended to read:

9 180.1106 (1) (b) The title to all property owned by each business entity that is
10 party to the merger is vested in the surviving business entity without reversion or
11 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
12 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
13 ~~that interest to the business entity surviving the merger and shall execute any real~~
14 ~~estate transfer return required under s. 77.22. The business entity surviving the~~
15 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
16 ~~office of the register of deeds for each county in which the real estate is located.~~

17 SECTION 19. 180.1130 (14) of the statutes is repealed and recreated to read:

18 180.1130 (14) "Valuation date" means the time at which the closing price is
19 determined on the day before the first public announcement of the proposed business
20 combination.

****NOTE: I specified that the valuation date is the *time* at which the closing price
is determined. It is conceptually problematic to define the valuation date as the closing
price itself. Please let me know if you desire any changes.

21 SECTION 20. 180.1140 (11) of the statutes is amended to read:

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1 180.1140 (11) "Stock acquisition date", with respect to any person, means the
2 date time that that person first becomes an interested stockholder of that resident
3 domestic corporation.

4 SECTION 21. 180.1150 (2) of the statutes is amended to read:

in accordance with
Sec. 180.0824(3)
180.0824(3)

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

****NOTE: Replaced "approved" with "specified" to clarify that what's actually happening is that the board is *not* approving the effect of the control share statute.

13 SECTION 22. 180.1161 (4) (c) of the statutes is amended to read:

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

23 SECTION 23. 180.1201 (title) of the statutes is amended to read:

1 **180.1201 (title) Sale of assets in regular course of business; mortgage**
2 **of assets; transfer of assets to subsidiary.**

3 **SECTION 24.** 180.1201 (1) (d) of the statutes is created to read:

4 180.1201 (1) (d) Transfer any or all of its assets to one or more corporations or
5 other entities, all of the shares or interests of which are owned by the corporation,
6 unless the transfer is in connection with a plan or action involving the sale, exchange,
7 or disposal of all or substantially all of the assets of the corporation and requires
8 shareholder approval under s. 180.1202.

9 **SECTION 25.** 180.1201 (2) of the statutes is amended to read:

10 180.1201 (2) Unless required by the articles of incorporation, approval by the
11 shareholders of a transaction ~~described~~ permitted in sub. (1) is not required.

12 **SECTION 26.** 180.1302 (4) of the statutes is amended to read:

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

 ****NOTE: Please let me know if you believe this treatment necessitates an
amendment of s. 180.1301 (4), stats.

20 **SECTION 27.** 180.1805 (5) of the statutes is amended to read:

21 180.1805 (5) By merger or share exchange that becomes effective under ss.
22 180.1101 to ~~180.1107~~ 180.1106, or a share exchange of existing shares for other
23 shares of a different class or series in the corporation.

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****NOTE: Corrects erroneous cross-reference in current statutes.

1 **SECTION 28.** 181.1106 (2) of the statutes is amended to read:

2 181.1106 (2) TITLE TO PROPERTY. The title to all real estate and other property
3 owned by each business entity that is a party to the merger is vested in the surviving
4 business entity without reversion or impairment subject to any conditions to which
5 the property was subject before the merger, ~~provided that, if a merging business~~
6 ~~entity has an interest in real estate in Wisconsin on the date of the merger, the~~
7 ~~merging business entity shall transfer that interest to the business entity surviving~~
8 ~~the merger and shall execute any real estate transfer return required under s. 77.22.~~
9 The business entity surviving the merger shall promptly record the instrument of
10 conveyance under s. 59.43 in the office of the register of deeds for each county in
11 which the real estate is located.

12 **SECTION 29.** 181.1161 (4) (c) of the statutes is amended to read:

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

22 **SECTION 30.** 183.1205 (2) of the statutes is amended to read:

23 183.1205 (2) The title to all property owned by each business entity that is a
24 party to the merger is vested in the surviving business entity without reversion or

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

7 **SECTION 31.** 183.1207 (4) (c) of the statutes is amended to read:

8 183.1207 (4) (c) The business entity continues to be vested with title to all
9 property owned by the business entity that was converted without reversion or
10 ~~impairment, provided that, if the converting business entity has an interest in real~~
11 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
12 ~~transfer that interest to the business entity surviving the conversion and shall~~
13 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
14 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
15 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
16 ~~is located.~~

17 (END)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2166/~~2~~1

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Final

DRAFT

Men. Cat.

1 AN ACT *to repeal* 180.0825 (2) (a), 180.0825 (5) (a), (b) and (c) to (h) and 180.1105
2 (1) (a) and (b); *to renumber and amend* 180.0602 (3); *to consolidate,*
3 *renumber and amend* 180.0825 (2) (intro.) and (b); *to amend* 179.02 (1),
4 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3),
5 180.0825 (1), 180.1106 (1) (b), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c),
6 180.1201 (title), 180.1201 (2), 180.1302 (4), 180.1805 (5), 181.1106 (2), 181.1161
7 (4) (c), 183.1205 (2) and 183.1207 (4) (c); *to repeal and recreate* 180.1130 (14);
8 and *to create* 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and
9 (bm), 180.1105 (1) (am), (bm) and (c) to (f) and 180.1201 (1) (d) of the statutes;
10 **relating to:** the authority of the board of directors of business corporations and
11 corporate committees; corporate shareholder notices and meetings; mergers,

1 conversions, and other business combinations; the transfer of corporate
2 property to certain affiliates; and naming limited partnerships.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the laws governing business corporations. It also makes changes to the laws governing limited partnerships, nonstock corporations, and limited liability companies. Significant changes include:

BUSINESS CORPORATIONS

Classes or series of stock

Under current law, a corporation's articles of incorporation may authorize the board of directors of the corporation to determine the preferences, limitations, and relative rights of a class or series of shares of stock. Generally, the board must set the terms of a class or series in an amendment to the articles of incorporation, which need not be approved by the shareholders. Current law permits the board to revise the terms by resolution, as long as no shares have been issued. After shares are issued, any such revision must be by amendment to the articles of incorporation.

This bill similarly permits the board to set and revise the distinguishing designation of a class or series. The bill also permits the board, at any time after the required articles of amendment are filed, to decrease the number shares of the applicable class or series (but not below the number of such shares that are outstanding), to eliminate the class or series (if no shares are outstanding), or to increase the number of shares of the class or series (but not beyond the number of such shares that are ~~*** need to complete after obtaining comments concerning proposed s. 180.0602 (3) (b) 0.1)~~

Shareholder notices and meetings

Current law contains several requirements pursuant to which a corporation must provide notice to a shareholder. In addition, a corporation's articles of incorporation and bylaws may also contain such requirements. This bill provides an exemption from any such requirement if a specified number of notices or dividend payments are returned to the corporation as undeliverable. The bill permits a shareholder to reinstate the notice requirements by delivering to the corporation a written statement setting forth the shareholder's current address. Current law does not have any similar exemption, although current law does permit a shareholder to waive any notice required under the corporate laws or the corporation's articles of incorporation or bylaws.

This bill permits a corporation's articles of incorporation or bylaws to specify the manner in which shareholder meetings will be conducted. The bill also sets default rules for the conduct of these meetings if the articles of incorporation or bylaws do not so specify. Under these default rules, a chairperson appointed by the board of directors must preside over the meeting. The chairperson must determine the order of business and time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all

shareholders. In addition, the chairperson must provide notice of when the polls close for each item voted upon at the meeting, except that if no such notice is provided the polls close upon final adjournment of the meeting.

Committees

Current law permits the board of directors to create committees, unless the articles of incorporation or bylaws provide otherwise. Currently, a committee must have at least two members. This bill allows a committee to have only one member.

With certain exceptions, the creation of a committee, appointment of members to it, and designation of alternative members currently must be approved by the greater of: 1) a majority of all directors currently in office; or 2) the number of directors required by the articles of incorporation or bylaws to take action (typically, a majority of directors present, if a quorum is present). This bill deletes the possible necessity for a majority vote of all directors currently in office, unless that requirement is specified in the articles of incorporation or bylaws.

Current law prohibits a committee from doing any of the following: 1) authorizing distributions; 2) approving or proposing to shareholders action that this chapter requires be approved by shareholders; 3) filling vacancies on the board of directors or, with certain exceptions, on any of its committees; 4) amending articles of incorporation without shareholder action; 5) adopting, amending, or repealing bylaws; 6) approving a plan of merger not requiring shareholder approval; 7) authorizing or approving reacquisition of shares, except according to a formula or method prescribed by the board of directors; or 8) authorizing or approving the issuance or sale or contract for sale of shares, or determining the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits prescribed by the board of directors. This bill deletes all of these restrictions, except items 2) and 5).

Mergers, share exchanges, and business combinations

Currently, when a corporation approves a merger or share exchange, it must file articles of merger or share exchange with the Department of Financial Institutions. Among other things, the articles of merger or share exchange must include the plan of merger or share exchange. This bill deletes this requirement and, instead, requires the articles of merger to state that a plan of merger or share exchange has been approved and adopted as required by law, that the plan is on file at the principle place of business of the surviving corporation, and that the surviving corporation will provide a copy of the plan, upon request and without cost, to any shareholder or, upon payment of the cost of producing the copy, to any other interested person. The bill also specifies other information that must be included in the articles of merger or share exchange.

Currently, a corporation may not engage in a business combination (including certain mergers) unless a specified supermajority of shareholders vote to approve the combination. However, this requirement does not apply if the shareholders receive a price for their shares that satisfies a specified formula. One factor in applying this formula is to determine the valuation date of the shares. Currently, the valuation date is defined as the later of the day before the date on which the shareholders' vote

concerning the combination or the day that is 20 days before the consummation of the combination. This bill specifies, instead, that the valuation date is the day before the first public announcement of the proposed business combination.

Current law restricts the ability of a corporation to engage in a business combination (including certain mergers) for three years following the “stock acquisition date,” which is defined as the date on which any person first acquires at least 10% of the corporation’s stock. Under this bill, the “stock acquisition date” is the *time* at which a person first acquires at least 10% of the corporation’s stock.

With certain exceptions, the voting power of any person owning greater than 20% of a corporation’s stock is currently limited to 10% of the full voting power of those shares, unless the articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This bill also permits the board of directors to specify that regular voting power will apply.

Under current law, if a shareholder dissents from certain mergers, share exchanges, or other business combinations, the shareholder may obtain payment of the fair value of his or her shares. Currently, the fair value is determined pursuant to several specified criteria. With limited exceptions, this bill provides an exemption from these dissenter’s rights if the applicable shares are registered on a national securities exchange or quoted in the National Association of Securities Dealers, Inc. This exemption is identical to the exemption that applies generally to other dissenter’s rights provisions.

Transfer of property to certain affiliates

Current law authorizes the board of directors of a corporation to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; to sell, lease, exchange, or otherwise dispose of less than substantially all of its property whether or not in the usual and regular course of business; and to encumber any or all of its property whether or not in the usual and regular course of business. Unless the articles of incorporation require otherwise, the board may take these actions without shareholder approval. This bill similarly permits the board to transfer any or all of its assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation, unless the transfer is in connection with a plan or action involving the sale, exchange, or disposal of all or substantially all of the assets of the corporation and requires shareholder approval.

OTHER CHANGES

Currently, the name of a limited partnership must contain the words “limited partnership” without abbreviation. This bill allows the name to include abbreviated versions of those words.

Under current law, when a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity (or when a business corporation enters into a share exchange), title to all personal property transfers, by operation of law, to the surviving entity. Title to real estate generally must be transferred by deed, which must be recorded in the appropriate office of the register of deeds. This bill deletes this special treatment for real estate.

As a result, under this bill, title to all property transfers, by operation of law, to the surviving entity.

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

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

2 179.02 (1) Shall contain, with or without abbreviation, the words “limited
3 partnership”.

4 **SECTION 2.** 179.76 (4) (c) of the statutes is amended to read:

5 179.76 (4) (c) The business entity continues to be vested with title to all
6 property owned by the business entity that was converted without reversion or
7 impairment, ~~provided that, if the converting business entity has an interest in real~~
8 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
9 ~~transfer that interest to the business entity surviving the conversion and shall~~
10 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
11 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
12 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
13 ~~is located.~~

14 **SECTION 3.** 179.77 (6) (c) of the statutes is amended to read:

15 179.77 (6) (c) The title to all property owned by each business entity that is a
16 party to the merger is vested in the surviving business entity without reversion or
17 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
18 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
19 ~~that interest to the business entity surviving the merger and shall execute any real~~
20 ~~estate transfer return required under s. 77.22. The business entity surviving the~~

1 merger shall promptly record the instrument of conveyance under s. 59.43 in the
2 office of the register of deeds for each county in which the real estate is located.

3 SECTION 4. 180.0502 (3) of the statutes is amended to read:

4 180.0502 (3) If the name of a registered agent changes or if the street address
5 of his or her a registered agent's business office, he or she changes, the registered
6 agent may change the name of the registered agent or street address of the registered
7 office of any corporation for which he or, she, or it is the registered agent by notifying.
8 To make a change under this subsection, the registered agent shall notify the
9 corporation in writing of the change and by signing, either manually or in facsimile,
10 and delivering deliver to the department for filing a signed statement that complies
11 with sub. (2) and recites that the corporation has been notified of the change.

12 SECTION 5. 180.0602 (3) of the statutes is renumbered 180.0602 (3) (a) and
13 amended to read:

14 180.0602 (3) (a) After the articles of amendment are filed under sub. (2) and
15 before the corporation issues any shares of the class or series that is the subject of
16 the articles of amendment, the board of directors may alter or revoke any the
17 distinguishing designation of the class or series and the preferences, limitations, or
18 relative rights described in the articles of amendment, by adopting another
19 resolution appropriate for that purpose. The corporation shall file with the
20 department revised articles of amendment that comply with sub. (2). -A Except as
21 provided in par. (b), a distinguishing designation, preference, limitation, or relative
22 right may not be altered or revoked after the issuance of any shares of the class or
23 series that are subject to the distinguishing designation, preference, limitation, or
24 relative right, except by amendment of the articles of incorporation under s.
25 180.1003.

*If the board of directors
adpts such a resolution, the*

***NOTE: (A) I did not add the proposed language “the number of shares of the class or series” in this paragraph because it is governed more specifically by proposed par. (b) below. Please let me know if I have misunderstood your intent. It wasn’t clear to me whether you intend to treat changes in the number of shares similarly to changes currently permitted under s. 180.0602 (3), stats. (B) Please let me know if you think the language “Except as provided in par. (b)” in the last sentence is unnecessary.

1 **SECTION 6.** 180.0602 (3) (b) of the statutes is created to read:

2 180.0602 (3) (b) 1. Except as otherwise provided in this subdivision, after the
3 articles of amendment are filed under sub. (2), the board of directors may decrease
4 the number of shares of the class or series that is the subject of the articles of
5 amendment by adopting another resolution appropriate for that purpose. The
6 shares specified in the resolution shall resume their prior ^{the} status. The board of
7 directors may not decrease the number of shares under this subdivision below the
8 number of such shares that are then outstanding. ^{applicable to them immediately before}
^{their inclusion in the class or series}

***NOTE: (A) I did not add “unless otherwise provided in any such resolution or resolutions” because, as drafted, I don’t think resolutions under par. (a) deal with changes in the number of shares. Please let me know if you disagree. (B) Please let me know if you intend any additional provisions from par. (a) to apply under this subdivision. (C) I broke out the elimination of a class or series into its own subdivision. See subd. 2. below.

9 2. After the articles of amendment are filed under sub. (2), if no shares of the
10 class or series that is the subject of the articles of amendment are then outstanding,
11 the board of directors may eliminate from the articles of incorporation all matters set
12 forth in the articles of amendment with respect to that class or series by adopting
13 another resolution for that purpose. The board of directors shall prepare a certificate
14 setting forth the content of any resolution under this subdivision, stating that none
15 of the authorized shares of the class or series are outstanding, and stating that no
16 such shares will be issued under the articles of amendment and shall deliver the
17 signed certificate to the department for filing. A resolution under this subdivision
18 takes effect upon filing of the certificate by the department and has the effect of

1 eliminating from the articles of incorporation all matters set forth in the articles of
2 amendment with respect to the applicable class or series.

****NOTE: (A) Please let me know if this subdivision does not accomplish your intent. I tried to stay very close to the language provided to me. (B) See notes "A" and "B" under subd. 1. above.

3 3. Except as otherwise provided in this subdivision, after the articles of
4 amendment are filed under sub. (2), the board of directors may increase the number
5 of shares of the class or series that is the subject of the articles of amendment by
6 adopting another resolution appropriate for that purpose. The board of directors
7 may not increase the number of shares under this subdivision to be greater than

8 **** [must complete per note "B" below].

the total number of authorized shares of the class or series.

****NOTE: (A) See notes "A" and "B" to subd. 1. above. (B) Your instructions noted that any increase in the number of shares may not be above "the total number of authorized shares of the class or series." I don't understand your intent. The articles of amendment set the number of shares of a series or class that are created. I assume this subdivision is intended to allow the board to increase that number, but subject to what limits? The limits under s. 180.0601, stats.? Please let me know.

9 SECTION 7. 180.0706 (title) of the statutes is amended to read:

10 180.0706 (title) **Waiver of and exemption from notice.**

11 SECTION 8. 180.0706 (3) of the statutes is created to read:

12 180.0706 (3) (a) Except as provided in par. (b), any notice required to be given
13 by a corporation to a shareholder under this chapter is not required to be given if any
14 of the following applies:

15 1. Notice of 2 consecutive annual meetings, and all notices of meetings during
16 the period between these annual meetings, have been sent to the shareholder at the
17 shareholder's address as shown on the records of the corporation and have been
18 returned as undeliverable.

19 2. All, but not less than 2, payments of dividends on securities during a
20 one-year period, or 2 consecutive payments of dividends on securities during a period

1 of more than one year, have been sent to the shareholder at the shareholder's address
2 as shown on the records of the corporation and have been returned as undeliverable.

3 (b) If a shareholder to whom par. (a) applies delivers to the corporation a
4 written notice containing the shareholder's current address, then, beginning 30 days
5 after receipt of the notice by the corporation, the requirement that notice be given
6 to the shareholder is reinstated, until such time as par. (a) may again apply.

7 **SECTION 9.** 180.0708 of the statutes is created to read:

8 **180.0708 Conduct of meeting.** Unless the articles of incorporation or bylaws
9 provide otherwise, every meeting of the shareholders shall be conducted as follows:

10 (1) A chairperson shall preside over the meeting. The chairperson shall be
11 appointed by the board of directors.

***NOTE: Shortened by relying on the (intro.).

12 (2) The chairperson shall determine the order of business and the time of
13 adjournment and may establish rules for the conduct of the meeting which the
14 chairperson believes are fair to the interests of all shareholders. *determine and*

15 (3) The chairperson shall announce at the meeting the time at which the polls
16 will close for each matter voted upon at the meeting. The polls close at the announced
17 time, except that, if no such announcement is made, the polls close upon final
18 adjournment of the meeting. After the polls close, no ballots, proxies, or votes, or
19 revocations or changes thereto, may be accepted. *9*

***NOTE: Please review this subsection. It was unclear from the proposed language whether the chairperson was to announce the closing of the polls or provide notice as to when the polls will close. From the additional information that you provided, I gathered that the intent was to provide notice. Please let me know if I was mistaken.

20 **SECTION 10.** 180.0824 (3) of the statutes is amended to read:

21 180.0824 (3) Except as provided in ss. 180.0825 (2) and (3), 180.0831 (4) and
22 180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote

1 of a majority of directors present is the act of the board of directors or a committee
2 of the board of directors created under s. 180.0825, unless the articles of
3 incorporation or bylaws require the vote of a greater number of directors.

****NOTE: Treatment of this section was necessitated by proposed s. 180.0825 (2) below. If the treatment of that section is changed, then this treatment may also need to be changed or deleted.

4 **SECTION 11.** 180.0825 (1) of the statutes is amended to read:

5 180.0825 (1) Unless the articles of incorporation or bylaws provide otherwise,
6 a board of directors may create one or more committees, appoint members of the
7 board of directors to serve on the committees and designate other members of the
8 board of directors to serve as alternates. Each committee shall have ~~2 or more~~
9 members at least one member. Unless otherwise provided by the board of directors,
10 members of the committee shall serve at the pleasure of the board of directors.

****NOTE: Using the term "committee" to refer to a single individual is not standard English usage. As result, it makes certain provisions where the term "committee" is used, such as s. 180.0824 (1) (b), (2) (b), and (3), unusual to apply. They still work, they are just odd. To some extent, this problem currently exists in the case of a committee with two members. However, if you would like to call a committee of one something other than a committee (for example, a "special designee"), please let me know and I will adjust this provision and other affected statutes accordingly.

11 **SECTION 12.** 180.0825 (2) (intro.) and (b) of the statutes are consolidated,
12 renumbered 180.0825 (2) and amended to read:

13 180.0825 (2) Except as provided in sub. (3), the creation of a committee,
14 appointment of members to it and designation of alternate members, if any, shall be
15 approved by the ~~greater of the following:~~ (b) The number of directors required by the
16 articles of incorporation or bylaws to take action under s. 180.0824 (3).

****NOTE: It was unclear what was meant by "A majority of a quorum of the board." I assumed that you intended to require a majority vote of the directors present, as long as there is a quorum. If you meant a majority vote of the number required for a quorum, regardless of the number of directors present, please let me know. Also, if that is what you meant, then I think that number will always be less than the number currently permitted under s. 180.0825 (2) (b), stats.

17 **SECTION 13.** 180.0825 (2) (a) of the statutes is repealed.

1 SECTION 14. 180.0825 (5) (a), (b) and (c) to (h) of the statutes are repealed.

2 SECTION 15. 180.0825 (5) (am) and (bm) of the statutes are created to read:

3 180.0825 (5) (am) Approve or recommend to shareholders for approval any
4 action or matter expressly required by this chapter to be submitted to shareholders
5 for approval.

****NOTE: Deleted "adopt" because it didn't seem to make sense to refer to adopting an action.

6 (bm) Adopt, amend, or repeal any bylaw of the corporation.

7 SECTION 16. 180.1105 (1) (a) and (b) of the statutes are repealed.

8 SECTION 17. 180.1105 (1) (am), (bm) and (c) to (f) of the statutes are created to
9 read:

10 180.1105 (1) (am) The name and state of incorporation of each corporation that
11 is a party to the merger or share exchange.

12 (bm) That a plan of merger or share exchange has been approved and adopted
13 by each corporation that is a party to the merger or share exchange as required under
14 s. 180.1103 or 180.1104, as applicable.

15 (c) The name of the surviving or acquiring corporation.

by ^{the} parties to the merger

16 (d) In the case of a merger, any amendments in the articles of incorporation of
17 the surviving corporation that are intended to take effect upon the merger or, if there
18 are no such amendments, a statement that the articles of incorporation of the
19 surviving corporation or another corporation that is a party to the merger will be the
20 articles of incorporation of the surviving corporation.

****NOTE: (A) It is unclear how these provisions relate to ss. 180.1001 to 180.1006, which also deal with amending the articles of incorporation. (B) Due to the use of the passive voice, it is also unclear who or what "intends" the amendments referred to in this paragraph (i.e., are the amendments intended by the shareholders, by the board, or by someone else?). Please let me know if you would like to clarify either of these issues.

1 (e) That the executed plan of merger or share exchange is on file at the principal
2 place of business of the surviving or acquiring corporation.

3 (f) That the surviving or acquiring corporation will provide a copy of the plan
4 of merger or share exchange, upon request and without cost, to any shareholder of
5 a corporation that was a party to the merger or share exchange or, upon payment to
6 the surviving or acquiring corporation of an amount equal to the cost of producing
7 the copy, to any other interested person.

8 **SECTION 18.** 180.1106 (1) (b) of the statutes is amended to read:

9 180.1106 (1) (b) The title to all property owned by each business entity that is
10 party to the merger is vested in the surviving business entity without reversion or
11 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
12 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
13 ~~that interest to the business entity surviving the merger and shall execute any real~~
14 ~~estate transfer return required under s. 77.22. The business entity surviving the~~
15 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
16 ~~office of the register of deeds for each county in which the real estate is located.~~

17 **SECTION 19.** 180.1130 (14) of the statutes is repealed and recreated to read:

18 180.1130 (14) "Valuation date" means the time at which the closing price ^{of the stock} is
19 determined on the day before the first public announcement of the proposed business
20 combination.

21 **SECTION 20.** 180.1140 (11) of the statutes is amended to read:

****NOTE: I specified that the valuation date is the *time* at which the closing price is determined. It is conceptually problematic to define the valuation date as the closing price itself. Please let me know if you desire any changes.

1 180.1140 (11) "Stock acquisition date", with respect to any person, means the
2 date time that that person first becomes an interested stockholder of that resident
3 domestic corporation.

in accordance with s. 180.0824(3)

4 **SECTION 21.** 180.1150 (2) of the statutes is amended to read:

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

****NOTE: Replaced "approved" with "specified" to clarify that what's actually happening is that the board is *not* approving the effect of the control share statute.

13 **SECTION 22.** 180.1161 (4) (c) of the statutes is amended to read:

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

23 **SECTION 23.** 180.1201 (title) of the statutes is amended to read:

1 **180.1201 (title) Sale of assets in regular course of business; mortgage**
2 **of assets; transfer of assets to subsidiary.**

3 **SECTION 24.** 180.1201 (1) (d) of the statutes is created to read:

4 180.1201 (1) (d) Transfer any or all of its assets to one or more corporations or
5 other entities, all of the shares or interests of which are owned by the corporation,
6 unless the transfer is in connection with a plan or action involving the sale, exchange,
7 or disposal of all or substantially all of the assets of the corporation and requires
8 shareholder approval under s. 180.1202.

9 **SECTION 25.** 180.1201 (2) of the statutes is amended to read:

10 180.1201 (2) Unless required by the articles of incorporation, approval by the
11 shareholders of a transaction described permitted in sub. (1) is not required.

12 **SECTION 26.** 180.1302 (4) of the statutes is amended to read:

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

****NOTE: Please let me know if you believe this treatment necessitates an amendment of s. 180.1301 (4), stats.

20 **SECTION 27.** 180.1805 (5) of the statutes is amended to read:

21 180.1805 (5) By merger or share exchange that becomes effective under ss.
22 180.1101 to ~~180.1107~~ 180.1106, or a share exchange of existing shares for other
23 shares of a different class or series in the corporation.

****NOTE: Corrects erroneous cross-reference in current statutes.

1 **SECTION 28.** 181.1106 (2) of the statutes is amended to read:

2 181.1106 (2) TITLE TO PROPERTY. The title to all real estate and other property
3 owned by each business entity that is a party to the merger is vested in the surviving
4 business entity without reversion or impairment subject to any conditions to which
5 the property was subject before the merger, ~~provided that, if a merging business~~
6 ~~entity has an interest in real estate in Wisconsin on the date of the merger, the~~
7 ~~merging business entity shall transfer that interest to the business entity surviving~~
8 ~~the merger and shall execute any real estate transfer return required under s. 77.22.~~
9 ~~The business entity surviving the merger shall promptly record the instrument of~~
10 ~~conveyance under s. 59.43 in the office of the register of deeds for each county in~~
11 ~~which the real estate is located.~~

12 **SECTION 29.** 181.1161 (4) (c) of the statutes is amended to read:

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

22 **SECTION 30.** 183.1205 (2) of the statutes is amended to read:

23 183.1205 (2) The title to all property owned by each business entity that is a
24 party to the merger is vested in the surviving business entity without reversion or

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

7 **SECTION 31.** 183.1207 (4) (c) of the statutes is amended to read:

8 183.1207 (4) (c) The business entity continues to be vested with title to all
9 property owned by the business entity that was converted without reversion or
10 ~~impairment, provided that, if the converting business entity has an interest in real~~
11 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
12 ~~transfer that interest to the business entity surviving the conversion and shall~~
13 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
14 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
15 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
16 ~~is located.~~

17 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2166/1dn

RJM:lj...

King

g
Senator Stepp:

Attached is a revised version of the corporate law changes *that* you requested, incorporating changes suggested by the state bar. As you review the draft, please note the following:

1. I did not add language concerning the number of outstanding shares in the first sentence of proposed s. 180.0602 (3) (b) 1. because that language is already in the last sentence of that subsection.

2. Please review my treatment of the [✓]second sentence of proposed s. 180.0602 (3) (b) 1., which deals with the status of shares specified in a resolution under that subdivision. I was not entirely clear on what was intended with regard to this sentence.

3. I did not add language referring to a "board resolution" in the first sentence of proposed s. 180.0602 (3) (b) 1. because that sentence specifically authorizes the board to adopt a resolution (i.e., a "board resolution").

4. Proposed s. 180.0602 (3) (b) 3. may need to be clarified. This provision allows the board to increase the number of shares of a class or series, but not beyond "the total number of authorized shares." It is unclear what is meant by "the total number of authorized shares." I assume [Ⓢ]the phrase is not meant to refer to the number of shares of the class or series specified in the articles of amendment, although that is one possible interpretation. *that* It would be helpful to clarify this provision by cross-referencing the statute under which the total number of authorized shares is established.

5. As a result of the cross-reference added to proposed s. 180.1150 (2), I deleted the requirement that the specification be adopted by "a majority" of the board of directors. By relying on the cross-reference to s. 180.0824 (3), a majority of a quorum will be the required vote.

Please feel free to call if you have any questions or desire any additional changes.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2166/1dn
RJM:kmg:jf

April 17, 2003

Senator Stepp:

Attached is a revised version of the corporate law changes that you requested, incorporating changes suggested by the state bar. As you review the draft, please note the following:

1. I did not add language concerning the number of outstanding shares in the first sentence of proposed s. 180.0602 (3) (b) 1. because that language is already in the last sentence of that subsection.
2. Please review my treatment of the second sentence of proposed s. 180.0602 (3) (b) 1., which deals with the status of shares specified in a resolution under that subdivision. I was not entirely clear on what was intended with regard to this sentence.
3. I did not add language referring to a "board resolution" in the first sentence of proposed s. 180.0602 (3) (b) 1. because that sentence specifically authorizes the board to adopt a resolution (*i.e.*, a "board resolution").
4. Proposed s. 180.0602 (3) (b) 3. may need to be clarified. This provision allows the board to increase the number of shares of a class or series, but not beyond "the total number of authorized shares." It is unclear what is meant by "the total number of authorized shares." I assume that the phrase is not meant to refer to the number of shares of the class or series specified in the articles of amendment, although that is one possible interpretation. It would be helpful to clarify this provision by cross-referencing the statute under which the total number of authorized shares is established.
5. As a result of the cross-reference added to proposed s. 180.1150 (2), I deleted the requirement that the specification be adopted by "a majority" of the board of directors. By relying on the cross-reference to s. 180.0824 (3), a majority of a quorum will be the required vote.

Please feel free to call if you have any questions or desire any additional changes.

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April 21, 2003

VIA E-MAIL

Robert J. Marchant
Wisconsin Legislative Reference Bureau
PO Box 2037
Madison, WI 53701

Ms. Jenny Boese
State Bar of Wisconsin
5302 Eastpark Blvd.
Madison, WI 53718

Dear Jenny and Mr. Marchant:

I am writing with regard to the five comments that Mr. Marchant noted. With regard to the first, third and the fifth one, I am fine with what was done. I would note that the first four comments all relate to a proposed amendment to Section 180.0602. One of the reasons I have been slow in responding to this inquiry is that this amendment was really raised by the Steve Barth's Committee. Steve Barth was responsible for it. I have contacted him and asked for help but have not received any response and therefore I am going to go ahead and respond with what I believe was intended. With regard to comment number 2, I am fine but if you believe it helpful we may want to add to the words the shares specified in the Resolution shall resume the status of undesignated and unissued shares that may be redesignated and reissued by the Board. Mr. Marchant, does this cover the concern you raised?

With regard to point number 4, one way of fixing it is to add at the end of the sentence "as specified in the Articles of the Corporation."

Very truly yours,

QUARLES & BRADY LLP

Walter J. Skipper

WJS:ilm

QBMKE\5403062.1



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2166/2
RJM:kmg:jf

Soo

Per MR

2003 BILL

ONLY CHANGES
are ~~in~~ ON PGS. 8 +
9 +
12

Gen. Cat.

1 AN ACT *to repeal* 180.0825 (2) (a), 180.0825 (5) (a), (b) and (c) to (h) and 180.1105
2 (1) (a) and (b); *to renumber and amend* 180.0602 (3); *to consolidate,*
3 *renumber and amend* 180.0825 (2) (intro.) and (b); *to amend* 179.02 (1),
4 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3),
5 180.0825 (1), 180.1106 (1) (b), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c),
6 180.1201 (title), 180.1201 (2), 180.1302 (4), 180.1805 (5), 181.1106 (2), 181.1161
7 (4) (c), 183.1205 (2) and 183.1207 (4) (c); *to repeal and recreate* 180.1130 (14);
8 and *to create* 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and
9 (bm), 180.1105 (1) (am), (bm) and (c) to (f) and 180.1201 (1) (d) of the statutes;
10 **relating to:** the authority of the board of directors of business corporations and
11 corporate committees; corporate shareholder notices and meetings; mergers,

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1 conversions, and other business combinations; the transfer of corporate
2 property to certain affiliates; and naming limited partnerships.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the laws governing business corporations. It also makes changes to the laws governing limited partnerships, nonstock corporations, and limited liability companies. Significant changes include:

BUSINESS CORPORATIONS

Classes or series of stock

Under current law, a corporation's articles of incorporation may authorize the board of directors of the corporation to determine the preferences, limitations, and relative rights of a class or series of shares of stock. Generally, the board must set the terms of a class or series in an amendment to the articles of incorporation, which need not be approved by the shareholders. Current law permits the board to revise the terms by resolution, as long as no shares have been issued. After shares are issued, any such revision must be by amendment to the articles of incorporation.

This bill similarly permits the board to set and revise the distinguishing designation of a class or series. The bill also permits the board, at any time after the required articles of amendment are filed, to decrease the number shares of the applicable class or series (but not below the number of such shares that are outstanding), to eliminate the class or series (if no shares are outstanding), or to increase the number of shares of the class or series (but not beyond the number of such shares that are authorized).

Shareholder notices and meetings

Current law contains several requirements pursuant to which a corporation must provide notice to a shareholder. In addition, a corporation's articles of incorporation and bylaws may also contain such requirements. This bill provides an exemption from any such requirement if a specified number of notices or dividend payments are returned to the corporation as undeliverable. The bill permits a shareholder to reinstate the notice requirements by delivering to the corporation a written statement setting forth the shareholder's current address. Current law does not have any similar exemption, although current law does permit a shareholder to waive any notice required under the corporate laws or the corporation's articles of incorporation or bylaws.

This bill permits a corporation's articles of incorporation or bylaws to specify the manner in which shareholder meetings will be conducted. The bill also sets default rules for the conduct of these meetings if the articles of incorporation or bylaws do not so specify. Under these default rules, a chairperson appointed by the board of directors must preside over the meeting. The chairperson must determine the order of business and time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all shareholders. In addition, the chairperson must provide notice of when the polls

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close for each item voted upon at the meeting, except that if no such notice is provided the polls close upon final adjournment of the meeting.

Committees

Current law permits the board of directors to create committees, unless the articles of incorporation or bylaws provide otherwise. Currently, a committee must have at least two members. This bill allows a committee to have only one member.

With certain exceptions, the creation of a committee, appointment of members to it, and designation of alternative members currently must be approved by the greater of: 1) a majority of all directors currently in office; or 2) the number of directors required by the articles of incorporation or bylaws to take action (typically, a majority of directors present, if a quorum is present). This bill deletes the possible necessity for a majority vote of all directors currently in office, unless that requirement is specified in the articles of incorporation or bylaws.

Current law prohibits a committee from doing any of the following: 1) authorizing distributions; 2) approving or proposing to shareholders action that this chapter requires be approved by shareholders; 3) filling vacancies on the board of directors or, with certain exceptions, on any of its committees; 4) amending articles of incorporation without shareholder action; 5) adopting, amending, or repealing bylaws; 6) approving a plan of merger not requiring shareholder approval; 7) authorizing or approving reacquisition of shares, except according to a formula or method prescribed by the board of directors; or 8) authorizing or approving the issuance or sale or contract for sale of shares, or determining the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits prescribed by the board of directors. This bill deletes all of these restrictions, except items 2) and 5).

Mergers, share exchanges, and business combinations

Currently, when a corporation approves a merger or share exchange, it must file articles of merger or share exchange with the Department of Financial Institutions. Among other things, the articles of merger or share exchange must include the plan of merger or share exchange. This bill deletes this requirement and, instead, requires the articles of merger to state that a plan of merger or share exchange has been approved and adopted as required by law, that the plan is on file at the principle place of business of the surviving corporation, and that the surviving corporation will provide a copy of the plan, upon request and without cost, to any shareholder or, upon payment of the cost of producing the copy, to any other interested person. The bill also specifies other information that must be included in the articles of merger or share exchange.

Currently, a corporation may not engage in a business combination (including certain mergers) unless a specified supermajority of shareholders vote to approve the combination. However, this requirement does not apply if the shareholders receive a price for their shares that satisfies a specified formula. One factor in applying this formula is to determine the valuation date of the shares. Currently, the valuation date is defined as the later of the day before the date on which the shareholders' vote concerning the combination or the day that is 20 days before the consummation of

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the combination. This bill specifies, instead, that the valuation date is the day before the first public announcement of the proposed business combination.

Current law restricts the ability of a corporation to engage in a business combination (including certain mergers) for three years following the “stock acquisition date,” which is defined as the date on which any person first acquires at least 10% of the corporation’s stock. Under this bill, the “stock acquisition date” is the *time* at which a person first acquires at least 10% of the corporation’s stock.

With certain exceptions, the voting power of any person owning greater than 20% of a corporation’s stock is currently limited to 10% of the full voting power of those shares, unless the articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This bill also permits the board of directors to specify that regular voting power will apply.

Under current law, if a shareholder dissents from certain mergers, share exchanges, or other business combinations, the shareholder may obtain payment of the fair value of his or her shares. Currently, the fair value is determined pursuant to several specified criteria. With limited exceptions, this bill provides an exemption from these dissenter’s rights if the applicable shares are registered on a national securities exchange or quoted in the National Association of Securities Dealers, Inc. This exemption is identical to the exemption that applies generally to other dissenter’s rights provisions.

Transfer of property to certain affiliates

Current law authorizes the board of directors of a corporation to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; to sell, lease, exchange, or otherwise dispose of less than substantially all of its property whether or not in the usual and regular course of business; and to encumber any or all of its property whether or not in the usual and regular course of business. Unless the articles of incorporation require otherwise, the board may take these actions without shareholder approval. This bill similarly permits the board to transfer any or all of its assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation, unless the transfer is in connection with a plan or action involving the sale, exchange, or disposal of all or substantially all of the assets of the corporation and requires shareholder approval.

OTHER CHANGES

Currently, the name of a limited partnership must contain the words “limited partnership” without abbreviation. This bill allows the name to include abbreviated versions of those words.

Under current law, when a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity (or when a business corporation enters into a share exchange), title to all personal property transfers, by operation of law, to the surviving entity. Title to real estate generally must be transferred by deed, which must be recorded in the appropriate office of the register of deeds. This bill deletes this special treatment for real estate.

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As a result, under this bill, title to all property transfers, by operation of law, to the surviving entity.

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

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

2 179.02 (1) Shall contain, with or without abbreviation, the words “limited
3 partnership”.

4 **SECTION 2.** 179.76 (4) (c) of the statutes is amended to read:

5 179.76 (4) (c) The business entity continues to be vested with title to all
6 property owned by the business entity that was converted without reversion or
7 impairment, ~~provided that, if the converting business entity has an interest in real~~
8 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
9 ~~transfer that interest to the business entity surviving the conversion and shall~~
10 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
11 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
12 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
13 ~~is located.~~

14 **SECTION 3.** 179.77 (6) (c) of the statutes is amended to read:

15 179.77 (6) (c) The title to all property owned by each business entity that is a
16 party to the merger is vested in the surviving business entity without reversion or
17 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
18 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
19 ~~that interest to the business entity surviving the merger and shall execute any real~~
20 ~~estate transfer return required under s. 77.22. The business entity surviving the~~

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1 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
2 ~~office of the register of deeds for each county in which the real estate is located.~~

3 **SECTION 4.** 180.0502 (3) of the statutes is amended to read:

4 180.0502 (3) If the name of a registered agent changes or if the street address
5 of his or her a registered agent's business office, he or she changes, the registered
6 agent may change the name of the registered agent or street address of the registered
7 office of any corporation for which he or, she, or it is the registered agent by notifying.
8 To make a change under this subsection, the registered agent shall notify the
9 corporation in writing of the change and by signing, either manually or in facsimile,
10 and delivering deliver to the department for filing a signed statement that complies
11 with sub. (2) and recites that the corporation has been notified of the change.

12 **SECTION 5.** 180.0602 (3) of the statutes is renumbered 180.0602 (3) (a) and
13 amended to read:

14 180.0602 (3) (a) After the articles of amendment are filed under sub. (2) and
15 before the corporation issues any shares of the class or series that is the subject of
16 the articles of amendment, the board of directors may alter or revoke any the
17 distinguishing designation of the class or series and the preferences, limitations, or
18 relative rights described in the articles of amendment, by adopting another
19 resolution appropriate for that purpose. ~~The~~ If the board of directors adopts such a
20 resolution, the corporation shall file with the department revised articles of
21 amendment that comply with sub. (2). ~~A~~ Except as provided in par. (b), a
22 distinguishing designation, preference, limitation, or relative right may not be
23 altered or revoked after the issuance of any shares of the class or series that are
24 subject to the distinguishing designation, preference, limitation, or relative right,
25 except by amendment of the articles of incorporation under s. 180.1003.

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1 **SECTION 6.** 180.0602 (3) (b) of the statutes is created to read:

2 180.0602 (3) (b) 1. Except as otherwise provided in this subdivision, after the
3 articles of amendment are filed under sub. (2), the board of directors may decrease
4 the number of shares of the class or series that is the subject of the articles of
5 amendment by adopting another resolution appropriate for that purpose. The
6 shares specified in the resolution shall resume the status applicable to them
7 immediately before their inclusion in the class or series. The board of directors may
8 not decrease the number of shares under this subdivision below the number of such
9 shares that are then outstanding.

10 2. After the articles of amendment are filed under sub. (2), if no shares of the
11 class or series that is the subject of the articles of amendment are then outstanding,
12 the board of directors may eliminate from the articles of incorporation all matters set
13 forth in the articles of amendment with respect to that class or series by adopting
14 another resolution for that purpose. The board of directors shall prepare a certificate
15 setting forth the content of any resolution under this subdivision, stating that none
16 of the authorized shares of the class or series are outstanding, and stating that no
17 such shares will be issued under the articles of amendment and shall deliver the
18 signed certificate to the department for filing. A resolution under this subdivision
19 takes effect upon filing of the certificate by the department and has the effect of
20 eliminating from the articles of incorporation all matters set forth in the articles of
21 amendment with respect to the applicable class or series.

22 3. Except as otherwise provided in this subdivision, after the articles of
23 amendment are filed under sub. (2), the board of directors may increase the number
24 of shares of the class or series that is the subject of the articles of amendment by
25 adopting another resolution appropriate for that purpose. The board of directors

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1 may not increase the number of shares under this subdivision to be greater than the
2 total number of authorized shares of the class or series.

*as specified in the articles
of incorporation*

3 **SECTION 7.** 180.0706 (title) of the statutes is amended to read:

4 **180.0706 (title) Waiver of and exemption from notice.**

5 **SECTION 8.** 180.0706 (3) of the statutes is created to read:

6 180.0706 (3) (a) Except as provided in par. (b), any notice required to be given
7 by a corporation to a shareholder under this chapter is not required to be given if any
8 of the following applies:

9 1. Notice of 2 consecutive annual meetings, and all notices of meetings during
10 the period between these annual meetings, have been sent to the shareholder at the
11 shareholder's address as shown on the records of the corporation and have been
12 returned as undeliverable.

13 2. All, but not less than 2, payments of dividends on securities during a
14 one-year period, or 2 consecutive payments of dividends on securities during a period
15 of more than one year, have been sent to the shareholder at the shareholder's address
16 as shown on the records of the corporation and have been returned as undeliverable.

17 (b) If a shareholder to whom par. (a) applies delivers to the corporation a
18 written notice containing the shareholder's current address, then, beginning 30 days
19 after receipt of the notice by the corporation, the requirement that notice be given
20 to the shareholder is reinstated, until such time as par. (a) may again apply.

21 **SECTION 9.** 180.0708 of the statutes is created to read:

22 **180.0708 Conduct of meeting.** Unless the articles of incorporation or bylaws
23 provide otherwise, every meeting of the shareholders shall be conducted as follows:

24 (1) A chairperson shall preside over the meeting. The chairperson shall be
25 appointed by the board of directors.

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****NOTE: Shortened by relying on the (intro.).

1 (2) The chairperson shall determine the order of business and the time of
2 adjournment and may establish rules for the conduct of the meeting which the
3 chairperson believes are fair to the interests of all shareholders.

4 (3) The chairperson shall determine and announce at the meeting the time at
5 which the polls will close for each matter voted upon at the meeting. The polls close
6 at the announced time, except that, if no such announcement is made, the polls close
7 upon final adjournment of the meeting. After the polls close, no ballots, proxies, or
8 votes, or revocations or changes thereto, may be accepted.

9 **SECTION 10.** 180.0824 (3) of the statutes is amended to read:

10 180.0824 (3) Except as provided in ss. 180.0825 ~~(2) and (3)~~, 180.0831 (4) and
11 180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote
12 of a majority of directors present is the act of the board of directors or a committee
13 of the board of directors created under s. 180.0825, unless the articles of
14 incorporation or bylaws require the vote of a greater number of directors.

15 **SECTION 11.** 180.0825 (1) of the statutes is amended to read:

16 180.0825 (1) Unless the articles of incorporation or bylaws provide otherwise,
17 a board of directors may create one or more committees, appoint members of the
18 board of directors to serve on the committees and designate other members of the
19 board of directors to serve as alternates. Each committee shall have ~~2 or more~~
20 members at least one member. Unless otherwise provided by the board of directors,
21 members of the committee shall serve at the pleasure of the board of directors.

22 **SECTION 12.** 180.0825 (2) (intro.) and (b) of the statutes are consolidated,
23 renumbered 180.0825 (2) and amended to read:

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1 180.0825 (2) Except as provided in sub. (3), the creation of a committee,
2 appointment of members to it and designation of alternate members, if any, shall be
3 approved by the ~~greater of the following: (b) The number of directors required by the~~
4 articles of incorporation or bylaws to take action under s. 180.0824 (3).

5 **SECTION 13.** 180.0825 (2) (a) of the statutes is repealed.

6 **SECTION 14.** 180.0825 (5) (a), (b) and (c) to (h) of the statutes are repealed.

7 **SECTION 15.** 180.0825 (5) (am) and (bm) of the statutes are created to read:

8 180.0825 (5) (am) Approve or recommend to shareholders for approval any
9 action or matter expressly required by this chapter to be submitted to shareholders
10 for approval.

11 (bm) Adopt, amend, or repeal any bylaw of the corporation.

12 **SECTION 16.** 180.1105 (1) (a) and (b) of the statutes are repealed.

13 **SECTION 17.** 180.1105 (1) (am), (bm) and (c) to (f) of the statutes are created to
14 read:

15 180.1105 (1) (am) The name and state of incorporation of each corporation that
16 is a party to the merger or share exchange.

17 (bm) That a plan of merger or share exchange has been approved and adopted
18 by each corporation that is a party to the merger or share exchange as required under
19 s. 180.1103 or 180.1104, as applicable.

20 (c) The name of the surviving or acquiring corporation.

21 (d) In the case of a merger, any amendments in the articles of incorporation of
22 the surviving corporation that are intended by the parties to the merger to take effect
23 upon the merger or, if there are no such amendments, a statement that the articles
24 of incorporation of the surviving corporation or another corporation that is a party
25 to the merger will be the articles of incorporation of the surviving corporation.

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1 (e) That the executed plan of merger or share exchange is on file at the principal
2 place of business of the surviving or acquiring corporation.

3 (f) That the surviving or acquiring corporation will provide a copy of the plan
4 of merger or share exchange, upon request and without cost, to any shareholder of
5 a corporation that was a party to the merger or share exchange or, upon payment to
6 the surviving or acquiring corporation of an amount equal to the cost of producing
7 the copy, to any other interested person.

8 **SECTION 18.** 180.1106 (1) (b) of the statutes is amended to read:

9 180.1106 (1) (b) The title to all property owned by each business entity that is
10 party to the merger is vested in the surviving business entity without reversion or
11 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
12 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
13 ~~that interest to the business entity surviving the merger and shall execute any real~~
14 ~~estate transfer return required under s. 77.22. The business entity surviving the~~
15 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
16 ~~office of the register of deeds for each county in which the real estate is located.~~

17 **SECTION 19.** 180.1130 (14) of the statutes is repealed and recreated to read:

18 180.1130 (14) “Valuation date” means the time at which the closing price of the
19 stock is determined on the day before the first public announcement of the proposed
20 business combination.

21 **SECTION 20.** 180.1140 (11) of the statutes is amended to read:

22 180.1140 (11) “Stock acquisition date”, with respect to any person, means the
23 date time that that person first becomes an interested stockholder of that resident
24 domestic corporation.

25 **SECTION 21.** 180.1150 (2) of the statutes is amended to read:

BILL

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

****NOTE: Replaced “approved” with “specified” to clarify that what’s actually
happening is that the board is *not* approving the effect of the control share statute.

9 **SECTION 22.** 180.1161 (4) (c) of the statutes is amended to read:

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

19 **SECTION 23.** 180.1201 (title) of the statutes is amended to read:

20 **180.1201 (title) Sale of assets in regular course of business; mortgage**
21 **of assets; transfer of assets to subsidiary.**

22 **SECTION 24.** 180.1201 (1) (d) of the statutes is created to read:

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1 180.1201 (1) (d) Transfer any or all of its assets to one or more corporations or
2 other entities, all of the shares or interests of which are owned by the corporation,
3 unless the transfer is in connection with a plan or action involving the sale, exchange,
4 or disposal of all or substantially all of the assets of the corporation and requires
5 shareholder approval under s. 180.1202.

6 **SECTION 25.** 180.1201 (2) of the statutes is amended to read:

7 180.1201 (2) Unless required by the articles of incorporation, approval by the
8 shareholders of a transaction ~~described~~ permitted in sub. (1) is not required.

9 **SECTION 26.** 180.1302 (4) of the statutes is amended to read:

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

17 **SECTION 27.** 180.1805 (5) of the statutes is amended to read:

18 180.1805 (5) By merger or share exchange that becomes effective under ss.
19 180.1101 to ~~180.1107~~ 180.1106, or a share exchange of existing shares for other
20 shares of a different class or series in the corporation.

21 **SECTION 28.** 181.1106 (2) of the statutes is amended to read:

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

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

7 **SECTION 29.** 181.1161 (4) (c) of the statutes is amended to read:

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

17 **SECTION 30.** 183.1205 (2) of the statutes is amended to read:

18 183.1205 (2) The title to all property owned by each business entity that is a
19 party to the merger is vested in the surviving business entity without reversion or
20 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
21 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
22 ~~that interest to the business entity surviving the merger and shall execute any real~~
23 ~~estate transfer return required under s. 77.22. The business entity surviving the~~
24 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
25 ~~office of the register of deeds for each county in which the real estate is located.~~

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1 **SECTION 31.** 183.1207 (4) (c) of the statutes is amended to read:

2 183.1207 (4) (c) The business entity continues to be vested with title to all
3 property owned by the business entity that was converted without reversion or
4 impairment, ~~provided that, if the converting business entity has an interest in real~~
5 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
6 ~~transfer that interest to the business entity surviving the conversion and shall~~
7 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
8 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
9 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
10 is located.

11

(END)

Barman, Mike

From: Marchant, Robert
Sent: Thursday, July 03, 2003 2:39 PM
To: Barman, Mike
Cc: Manley, Scott
Subject: Jacketing request

Mike--

Please jacket LRB-2166 for Sen. Stepp for introduction in the Senate. Thanks.

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
608-261-4454