

**SENATE AMENDMENT 1,
TO 2003 SENATE BILL 218**

February 20, 2004 – Offered by COMMITTEE ON ECONOMIC DEVELOPMENT, JOB
CREATION AND HOUSING.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 10, line 11: after that line insert:

3 “**SECTION 15p.** 180.1103 (1) of the statutes is amended to read:

4 180.1103 **(1)** SUBMIT TO SHAREHOLDERS. After adopting and approving a plan of
5 merger or share exchange, the board of directors of each corporation that is party to
6 the merger, and the board of directors of the corporation whose shares will be
7 acquired in the share exchange, shall submit the plan of merger, except as provided
8 in sub. (5) and s. 180.11045 (2), or share exchange for approval by its shareholders.

9 **SECTION 15t.** 180.11045 of the statutes is created to read:

10 **180.11045 Merger of indirect wholly owned subsidiary or parent. (1)**

11 DEFINITIONS. In this section:

12 (a) “Holding company” means a corporation that issues shares under sub. (2)

13 (b) and that, during the period beginning with its incorporation and ending with the

1 consummation of a merger under this section, was at all times a wholly owned
2 subsidiary of the parent corporation that is party to the merger.

3 (b) “Indirect wholly owned subsidiary” means any of the following:

4 1. A corporation, all of the outstanding shares of each class of which are, prior
5 to the consummation of a merger under this section, owned by a parent corporation
6 indirectly through one or more business entities.

7 2. A limited liability company organized under ch. 183, all of the outstanding
8 interests of each class of which are, prior to the consummation of a merger under this
9 section, owned by a parent corporation indirectly through one or more business
10 entities.

11 (c) “Organizational documents” means, when used in reference to a
12 corporation, the corporation’s articles of incorporation and bylaws and, when used
13 in reference to a limited liability company, the limited liability company’s operating
14 agreement.

15 (d) “Parent corporation” means a corporation owning, prior to the
16 consummation of a merger under this section, all of the outstanding shares of each
17 class of another corporation or all of the outstanding interests of each class of another
18 business entity.

19 (e) “Surviving entity” means the limited liability company or corporation, other
20 than the holding company, surviving a merger under sub. (2).

21 (f) “Wholly owned subsidiary” means any of the following:

22 1. A corporation, all of the outstanding shares of each class of which are owned
23 by a corporation indirectly through one or more business entities or directly.

1 2. A limited liability company organized under ch. 183, all of the outstanding
2 interests of each class of which are owned by a corporation indirectly through one or
3 more business entities or directly.

4 **(2) MERGER AUTHORIZED.** Unless the articles of incorporation of the parent
5 corporation specifically provide otherwise, or the parent corporation is a statutory
6 close corporation under ss. 180.1801 to 180.1837, a parent corporation may merge
7 with or into one of its indirect wholly owned subsidiaries pursuant to s. 180.1101
8 without approval of the shareholders of the parent corporation or the shareholders
9 or members of the indirect wholly owned subsidiary if all of the following conditions
10 are satisfied:

11 (a) The parent corporation and the indirect wholly owned subsidiary are the
12 only parties to the merger.

13 (b) Each share or other interest of the parent corporation outstanding
14 immediately prior to the effective time of the merger is converted in the merger into
15 a share or equal interest of a corporation that was a wholly owned subsidiary of the
16 parent corporation immediately prior to the consummation of the merger having the
17 same designation, preferences, limitations, and relative rights as the share or other
18 interest of the parent corporation outstanding immediately prior to the effective time
19 of the merger.

20 (c) Except as otherwise provided in this paragraph, immediately following the
21 effective time of the merger, the organizational documents of the holding company
22 issuing shares in the merger pursuant to sub. (2) (b) shall contain provisions
23 identical to the organizational documents of the parent corporation immediately
24 prior to the effective time of the merger. This requirement does not apply to
25 provisions regarding the incorporator or incorporators, the corporate name, the

1 registered office and agent, and provisions that are subject to amendment under s.
2 180.1002. To the extent that the second sentence of s. 180.0852 applied to the parent
3 corporation immediately prior to the effective time of the merger, the organizational
4 documents of the holding company immediately following the effective time of the
5 merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and
6 (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior
7 to the effective time of the merger, the articles of incorporation of the holding
8 company immediately following the effective time of the merger shall contain
9 provisions implementing s. 180.1706 (2) and (3).

10 (d) Immediately following the effective time of the merger, the surviving entity
11 is a wholly owned subsidiary of the holding company.

12 (e) The directors of the parent corporation immediately prior to the effective
13 time of the merger are the directors of the holding company immediately following
14 the effective time of the merger.

15 (f) Except as otherwise provided in this paragraph, the organizational
16 documents of the surviving entity immediately following the effective time of the
17 merger shall contain provisions identical to the organizational documents of the
18 parent corporation immediately prior to the effective time of the merger. With
19 respect to a surviving entity that is a corporation, this requirement does not apply
20 to provisions regarding the incorporator or incorporators; the corporate name; the
21 registered office and agent; and provisions that are subject to amendment under s.
22 180.1002 or any other law permitting amendment of the articles of incorporation
23 without approval of the shareholders. With respect to a surviving entity that is a
24 limited liability company, this requirement does not apply to provisions regarding
25 the organizer or organizers; the entity name; the registered office and agent;

1 references to members rather than shareholders; references to interests, units, or
2 similar terms rather than shares; references to managers rather than directors; and
3 provisions that are subject to amendment under any law permitting amendment of
4 the operating agreement without approval of the members. The organizational
5 documents of the surviving entity immediately following the effective time of the
6 merger may specify a reduced number of classes and shares or other interests that
7 the surviving entity is authorized to issue. To the extent that the 2nd sentence of s.
8 180.0852 applied to the parent corporation immediately prior to the effective time
9 of the merger, the organizational documents of the surviving entity immediately
10 following the effective time of the merger shall contain provisions implementing that
11 sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s.
12 180.1706 (1), immediately prior to the effective time of the merger, the organizational
13 documents of the surviving entity immediately following the effective time of the
14 merger shall contain provisions implementing s. 180.1706 (2) and (3). The
15 organizational documents of the surviving entity immediately following the effective
16 time of the merger shall contain provisions that specifically refer to this paragraph
17 and that require all of the following:

18 1. That any act, other than the election or removal of directors or managers of
19 the surviving entity, for which approval of the shareholders or members of the
20 surviving entity is required under this chapter, ch. 183, or the surviving entity's
21 organizational documents may be accomplished only with the additional approval of
22 the shareholders of the holding company or any successor to the holding company,
23 by the same vote as is required for approval of the shareholders or members of the
24 surviving entity under this chapter, ch. 183, or the surviving entity's organizational
25 documents.

1 2. If the surviving entity is a limited liability company, that any act, other than
2 the election or removal of managers of the surviving entity, for which approval of the
3 shareholders of the surviving entity would be required under this chapter if the
4 surviving entity were a corporation may be accomplished only with the additional
5 approval of the shareholders of the holding company or any successor to the holding
6 company, by the same vote as would be required for approval of the shareholders
7 under this chapter if the surviving entity were a corporation.

8 3. If the surviving entity is a limited liability company, that any amendment
9 of the organizational documents of the surviving entity which would be required
10 under this chapter to be included in the articles of incorporation of the surviving
11 entity if the surviving entity was a corporation, other than an amendment specified
12 in s. 180.1002, may be accomplished only with the additional approval of the
13 shareholders of the holding company or any successor to the holding company, by the
14 same vote as would be required for approval of the shareholders under this chapter
15 if the surviving entity were a corporation.

16 4. If the surviving entity is a limited liability company, that the affairs of the
17 surviving entity be managed by or under the direction of a group of managers
18 consisting of individuals who have the same fiduciary duties toward the surviving
19 entity and its members as the directors of a corporation have toward the corporation
20 and its shareholders and who are liable for breach of such duties to the same extent
21 as directors of a corporation.

22 (g) In the opinion of the board of directors of the parent corporation, the
23 shareholders of the parent corporation do not have a gain or loss under the Internal
24 Revenue Code as a result of the merger.

1 **(3) ARTICLES OF MERGER.** The surviving entity shall include in the articles of
2 merger under s. 180.1105 a statement that the merger was approved in accordance
3 with this section and that the requirements of sub. (2) have been satisfied.

4 **(4) EFFECT OF MERGER.** All of the following occur when a merger under sub. (2)
5 takes effect:

6 (a) To the extent that the restrictions of s. 180.1131, 180.1141, or 180.1150
7 applied to the parent corporation and its shareholders immediately prior to the
8 effective time of the merger, such restrictions apply to the holding company and its
9 shareholders immediately following the effective time of the merger to the same
10 extent as if the holding company were the parent corporation as the corporation
11 existed immediately prior to the consummation of the merger. For purposes of ss.
12 180.1130, 180.1132, 180.1141, 180.1142, 180.1143, and 180.1150, the shares of the
13 holding company acquired in the merger are deemed to have been acquired at the
14 time and for the price and form of consideration that the shares of the parent
15 corporation that were converted in the merger were acquired.

16 (b) If immediately prior to the effective time of the merger s. 180.1141,
17 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, such
18 section does not apply to the shareholder as a shareholder of the holding company
19 solely by reason of the merger.

20 (c) If the corporate name of the holding company immediately following the
21 effective time of the merger is the same as the corporate name of the parent
22 corporation immediately prior to the effective time of the merger, the shares of the
23 holding company into which the shares of the parent corporation are converted in the
24 merger are represented by the certificates that previously represented shares of the
25 parent corporation.

1 (d) A shareholder of the parent corporation immediately prior to the effective
2 time of the merger retains any right that the shareholder had immediately prior to
3 the effective time of the merger to institute or maintain a derivative proceeding in
4 the right of the parent corporation.

5 (e) No act of the surviving entity that requires the additional approval of the
6 shareholders of the holding company or any successor company pursuant to sub. (2)
7 (f) shall give rise to dissenters' rights pursuant to ss. 180.1301 to 180.1331 for the
8 shareholders or the beneficial shareholders of the holding company or any successor
9 to the holding company.

10 (f) To the extent that shares of the parent corporation immediately prior to the
11 effective time of the merger constituted shares of a preexisting class, the shares of
12 the holding company immediately following the effective time of the merger
13 constitute shares of a preexisting class to the same extent as if the holding company
14 were the parent corporation as the parent corporation existed immediately prior to
15 the consummation of the merger. Shares or interests of the surviving entity will not
16 constitute shares of a preexisting class for purposes of s. 180.1705. For purposes of
17 s. 180.1707, to the extent that shares of the parent corporation immediately prior to
18 the effective time of the merger constituted shares of a preexisting class, the shares
19 or interests of the surviving entity constitute shares of a preexisting class to the same
20 extent as if the surviving entity were the parent corporation as the parent
21 corporation existed immediately prior to the consummation of the merger.

22 (g) To the extent that the provisions of s. 180.1706 (4) applied to the parent
23 corporation immediately prior to the effective time of the merger, such provisions
24 apply to the holding company immediately following the effective time of the merger
25 to the same extent as if the holding company were the parent corporation as such

1 corporation existed immediately prior to the consummation of the merger. To the
2 extent that the provisions of s. 180.1706 (4) applied to the parent corporation
3 immediately prior to the effective time of the merger, if the surviving entity is a
4 corporation, such provisions apply to the surviving entity immediately following the
5 effective time of the merger to the same extent as if the surviving entity were the
6 parent corporation as such corporation existed immediately prior to the
7 consummation of the merger. To the extent that the provisions of s. 180.1706(4)
8 applied to the parent corporation immediately prior to the effective time of the
9 merger, if the surviving entity is a limited liability company, such provisions apply
10 to the corresponding provisions of the organizational documents of the surviving
11 entity immediately following the effective time of the merger to the same extent as
12 if the surviving entity were the parent corporation as such corporation existed
13 immediately prior to the consummation of the merger.

14 (h) To the extent that immediately prior to the effective time of the merger
15 shareholders of the parent corporation had rights or were subject to obligations or
16 restrictions of the types referred to in s. 180.0627 (2), 180.0630 (4), 180.0722 (2),
17 180.0730 (1), or 180.0731 (1), such rights, obligations, or restrictions apply to the
18 shareholders of the holding company immediately following the effective time of the
19 merger to the same extent as if the holding company were the parent corporation as
20 such corporation existed immediately prior to the consummation of the merger,
21 unless the agreement, waiver, proxy, or trust establishing the rights, obligations, or
22 restrictions specifies otherwise.”.

23 **2.** Page 11, line 16: after that line insert:

24 “**SECTION 18m.** 180.1130 (3) (a) (intro.) of the statutes is amended to read:

