

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

LRBa0888/P1dn  
RJM:kmg:pg

September 23, 2003

Senator Stepp:

Attached is the amendment that you requested concerning mergers with certain indirect, wholly owned subsidiaries. The amendment is in preliminary form for your review. As you review the amendment, please note the following issues:

1. The language of the amendment is not identical to the language submitted to me. I was mindful of the desire to keep the language close to Delaware's language, but there were some areas of ambiguity, wordiness, and overlap that I felt the need to address. Also, there were gaps that appeared to be unintentional and that I filled. However, it is important that the amendment be reviewed to ensure that everyone involved is as confident as I am that the draft is consistent with the Delaware language.
2. Under proposed s. 180.11045 (2), there is an exception for the case where the articles of incorporation require shareholder approval of this type of merger. However, there is no similar exception for the case where the operating agreement of the subsidiary LLC requires member approval of the merger. Do you wish to include such an exception?
3. I am unsure whether proposed s. 180.11045 (4) (a) and (b) accomplishes its intended result. It would be helpful to discuss a few hypothetical examples to ensure that these provisions are satisfactory. You may want to have Walt Skipper and his bar committee review this language, as well.

Please feel free to call if you have any questions.

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