

Committee Name:

Senate Committee – Economic Development, Job Creation and Housing (SC–EDJCH)

Appointments

03hr_SC–EDJCH_Appt_pt00

Committee Hearings

03hr_SC–EDJCH_CH_pt00

Committee Reports

03hr_SC–EDJCH_CR_pt00

Clearinghouse Rules

03hr_SC–EDJCH_CRule_03–

Executive Sessions

03hr_SC–EDJCH_ES_pt00

Hearing Records

03hr_ab0000

03hr_sb0218

Misc.

03hr_SC–EDJCH__Misc__pt00

Record of Committee Proceedings

03hr_SC–EDJCH_RCP_pt00

SB-218

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Roessler
Deadline: Tomorrow, 2-20-04, 11:00 am

The following bills received a public hearing yesterday, Wednesday, February 18, 2004. (Except SB 218, which received its public hearing on August 14, 2003. See attached for more information.)

Please return your paper ballot to Senator Stepp's office by 11:00 am tomorrow, Friday, February 20, 2004.

Thank you.

Shall the following Governor's appointments be recommended for confirmation?:

Kruger, David – of Madison, as a member of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 1, 2007.

YES NO

Levin, Lloyd – of Milwaukee, as a member of the Real Estate Board, to serve for the term ending July 1, 2007.

YES NO

Sveum, Peter – of Stoughton, as a member of the Real Estate Board, to serve for the term ending July 1, 2006.

YES NO

Thusty, Wayne – of Rib Lake, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2007.

YES NO

Wilson, Walter – of Milwaukee, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2006.

YES NO

Bills:

AB 354 - relating to: the display of the United States flag by condominium owners.

Senator Stepp moves concurrence.

YES NO

AB 370 - relating to: termination of a tenancy if notice given regarding drug or criminal gang activity.

Senator Stepp moves concurrence.

YES ___ NO

AB 608 – relating to: making changes to the comprehensive planning statute known as Smart Growth.

Senator Stepp moves concurrence.

YES ___ NO

SB 218 - relating to: the authority of the board of directors of business corporations and corporate committees; corporate shareholder notices and meetings; mergers, conversions, and other business combinations; the transfer of corporate property to certain affiliates; and naming limited partnerships.

Senator Stepp moves introduction and adoption of Amendment 1 to SB 218.

YES ___ NO

Senator Stepp moves passage as amended.

YES ___ NO

SB 428 – relating to: extending the expenditure period and the life of a tax incremental district in West Bend.

Senator Stepp moves passage.

YES ___ NO


Signature

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Brown

Deadline: Tomorrow, 2-20-04, 11:00 am

The following bills received a public hearing yesterday, Wednesday, February 18, 2004. (Except SB 218, which received its public hearing on August 14, 2003. See attached for more information.)

Please return your paper ballot to Senator Stepp's office by 11:00 am tomorrow, Friday, February 20, 2004.

Thank you.

Shall the following Governor's appointments be recommended for confirmation?:

Kruger, David – of Madison, as a member of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 1, 2007.

YES NO

Levin, Lloyd – of Milwaukee, as a member of the Real Estate Board, to serve for the term ending July 1, 2007.

YES NO

Sveum, Peter – of Stoughton, as a member of the Real Estate Board, to serve for the term ending July 1, 2006.

YES NO

Thusty, Wayne – of Rib Lake, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2007.

YES NO

Wilson, Walter – of Milwaukee, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2006.

YES NO

Bills:

AB 354 - relating to: the display of the United States flag by condominium owners.

Senator Stepp moves concurrence.

YES NO

AB 370 - relating to: termination of a tenancy if notice given regarding drug or criminal gang activity.

Senator Stepp moves concurrence.

YES NO

AB 608 – relating to: making changes to the comprehensive planning statute known as Smart Growth.

Senator Stepp moves concurrence.

YES NO

SB 218 - relating to: the authority of the board of directors of business corporations and corporate committees; corporate shareholder notices and meetings; mergers, conversions, and other business combinations; the transfer of corporate property to certain affiliates; and naming limited partnerships.

Senator Stepp moves introduction and adoption of Amendment 1 to SB 218.

YES NO

Senator Stepp moves passage as amended.

YES NO

SB 428 – relating to: extending the expenditure period and the life of a tax incremental district in West Bend.

Senator Stepp moves passage.

YES NO



Signature

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Moore

Deadline: Tomorrow, 2-20-04, 11:00 am

The following bills received a public hearing yesterday, Wednesday, February 18, 2004. (Except SB 218, which received its public hearing on August 14, 2003. See attached for more information.)

Please return your paper ballot to Senator Stepp's office by 11:00 am tomorrow, Friday, February 20, 2004.

Thank you.

Shall the following Governor's appointments be recommended for confirmation?:

Kruger, David – of Madison, as a member of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 1, 2007.

YES NO

Levin, Lloyd – of Milwaukee, as a member of the Real Estate Board, to serve for the term ending July 1, 2007.

YES NO

Sveum, Peter – of Stoughton, as a member of the Real Estate Board, to serve for the term ending July 1, 2006.

YES NO

Thusty, Wayne – of Rib Lake, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2007.

YES NO

Wilson, Walter – of Milwaukee, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2006.

YES NO

Bills:

AB 354 - relating to: the display of the United States flag by condominium owners.

Senator Stepp moves concurrence.

YES NO

AB 370 - relating to: termination of a tenancy if notice given regarding drug or criminal gang activity.

Senator Stepp moves concurrence.

YES NO

AB 608 - relating to: making changes to the comprehensive planning statute known as Smart Growth.

Senator Stepp moves concurrence.

YES NO

SB 218 - relating to: the authority of the board of directors of business corporations and corporate committees; corporate shareholder notices and meetings; mergers, conversions, and other business combinations; the transfer of corporate property to certain affiliates; and naming limited partnerships.

Senator Stepp moves introduction and adoption of Amendment 1 to SB 218.

YES NO

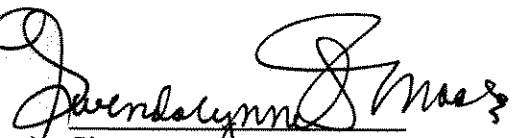
Senator Stepp moves passage as amended.

YES NO

SB 428 - relating to: extending the expenditure period and the life of a tax incremental district in West Bend.

Senator Stepp moves passage.

YES NO


Signature

Senate Committee on Economic Development, Job Creation and Housing

Paper Ballot: Senator Plale

Deadline: Tomorrow, 2-20-04, 11:00 am.

The following bills received a public hearing yesterday, Wednesday, February 18, 2004. (Except SB 218, which received its public hearing on August 14, 2003. See attached for more information.)

Please return your paper ballot to Senator Stepp's office by 11:00 am tomorrow, Friday, February 20, 2004.

Thank you.

Shall the following Governor's appointments be recommended for confirmation?:

Kruger, David – of Madison, as a member of the Wisconsin Housing and Economic Development Authority, to serve for the term ending January 1, 2007.

YES NO

Levin, Lloyd – of Milwaukee, as a member of the Real Estate Board, to serve for the term ending July 1, 2007.

YES NO

Sveum, Peter – of Stoughton, as a member of the Real Estate Board, to serve for the term ending July 1, 2006.

YES NO

Thusty, Wayne – of Rib Lake, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2007.

YES NO

Wilson, Walter – of Milwaukee, as a member of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, to serve for the term ending July 1, 2006.

YES NO

Bills:

AB 354 - relating to: the display of the United States flag by condominium owners.

Senator Stepp moves concurrence.

YES NO

AB 370 - relating to: termination of a tenancy if notice given regarding drug or criminal gang activity.

Senator Stepp moves concurrence.

YES NO

AB 608 – relating to: making changes to the comprehensive planning statute known as Smart Growth.

Senator Stepp moves concurrence.

YES NO

SB 218 - relating to: the authority of the board of directors of business corporations and corporate committees; corporate shareholder notices and meetings; mergers, conversions, and other business combinations; the transfer of corporate property to certain affiliates; and naming limited partnerships.

Senator Stepp moves introduction and adoption of Amendment 1 to SB 218.

YES NO

Senator Stepp moves passage as amended.

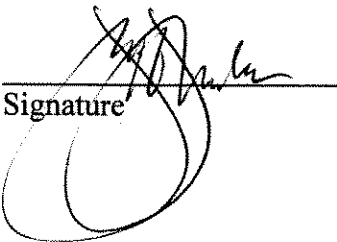
YES NO

SB 428 – relating to: extending the expenditure period and the life of a tax incremental district in West Bend.

Senator Stepp moves passage.

YES NO

Signature



Risch, Jay

From: Bergstrom, Leanne
Sent: Friday, February 20, 2004 11:59 AM
To: Risch, Jay
Subject: Vote on SB 218 from the Senate Economic Development, Job Creation and Housing Committee

Senator Moore votes yes on the amendment and passage of the bill SB 218



State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Testimony of
Kathryn Carlson
Department of Financial Institutions
Committee on Economic Development, Job Creation and Housing
SB 218 – Chapter 180 and “Next Economy” Updates
August 14, 2003

Senator Stepp, committee members, thank you for the opportunity to testify today on SB 218. On behalf of the Department of Financial Institutions, we appreciate the work of the Business Law Section of the State Bar and Senator Stepp in undertaking some necessary updates to Chapter 180 and the Next Economy legislation. In fact, much of this bill DFI regards as simple updates in an evolving business climate.

DFI's mission is to protect and promote Wisconsin's financial strength. We protect and ensure compliance through regulation and licensing of Wisconsin's financial institutions and professionals. The purpose of the Department's functions is to help maintain confidence and transparency in Wisconsin's financial markets. To that end, our role also involves the protection of investors who have placed their confidence in Wisconsin corporations. We would be remiss in our responsibility to Wisconsin shareholders and investors if we did not bring to the Committee's attention a few concerns we have with the current version of SB 218.

After the major corporate scandals of the past few years, new attention has been focused on encouraging best practices in corporate governance. At the national level the trend now is to promote accountability on the Boards of Directors. As you know, a Board's accountability, as well as its fiduciary obligation, is to the corporation's shareholders and we want to ensure that SB 218 does not unintentionally diminish the current strength of shareholders' rights in this state.

We are concerned with two sections of this bill--one that deals with changes to the structure and authority of Board of Directors' committees, and the other that would grant to the Board authority to waive the Control Share Voting Restriction provision.

Current law permits the Board of Directors to create committees that must have at least two members. The proposed legislation would allow a committee to have only one member. The obvious problem here is consolidation of authority in only one person.

Beyond allowing only one person to constitute a committee, this bill also increases the decision-making authority that one person will have. Current law prohibits a committee from authorizing eight specific actions. This bill deletes all but two of those prohibitions. If this bill passes, one director may have the power to fill vacancies on the board, amend articles of incorporation without shareholder action, authorize reacquisition of shares, authorize or approve the issuance

Office of the Secretary

Mail: PO Box 8861 Madison, WI 53708-8861

Voice: (608) 264-7800

Fax: (608) 261-4DFI

Courier: 345 W. Washington Ave. 5th Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: www.wdfi.org

or sale of shares and determine the designation, rights, preferences and limitations of a class or series of shares.

In some instances, these are rote tasks that would not present a danger to shareholders by allowing corporations to function through a one-person committee. The rationale presented for the need to allow one-person committees is that it is often difficult to get more than one director without various conflicts of interest to sit on a particular committee. However, it would seem that if there are too many conflicts of interest among the members of a corporation's Board, the "fix" should be to change the composition of the Board, not change the law.

The second item of concern to DFI in the bill is the proposal to allow the Board of Directors to waive the current Control Share Voting Restriction anti-takeover provision should they deem necessary. Currently the limitations on the voting power of shares beyond a 20% ownership level can be lifted only by a vote of all shareholders, unless the Articles of Incorporation provide otherwise. The proposed change would allow the Board, without a vote of the shareholders, to waive the limitations. The regulatory issue presented is one of "shareholder voting disenfranchisement" in that such a change would deprive shareholders of a significant voting right that they now have in corporate takeover contests involving their Corporation. This provision only really kicks-in in a hostile takeover situation and the concern of DFI is that if the Board can waive this provision unilaterally, it will become-- like the other two anti-takeover provisions currently in Chapter 180 -- merely a third anti-takeover tool for the Board to use as negotiating leverage in a hostile takeover situation.

The State Bar pointed out that the two other major anti-takeover provisions (Fair Price and Business Combination Provisions) are waivable by a Board of Directors. However, the Control Share Voting Rights provision as created in Wisconsin was a shareholder self-determination provision that literally gave shareholders exclusively, by their collective vote, the power to determine whether they wanted to lift the voting restriction to enable a particular takeover offer to succeed.

We truly understand the need to maintain competitive corporate laws in Wisconsin. However, the strength of Wisconsin's economy rests as much in investors' confidence as it does in corporate management flexibility. We want to make sure that we are doing our jobs in speaking for Wisconsin investors and so I thank you for your time in hearing our concerns.

I would be happy to answer any questions you may have.

Thank you.



**WISCONSIN
LAWYERS**
STATE BAR of WISCONSIN* EXPERT ADVISERS.
SERVING YOU.

MEMORANDUM

To: Senate Committee on Economic Development, Job Creation and Housing
From: Business Law Section of the State Bar of Wisconsin
Date: August 14, 2003
Re: Senate Bill 218

The Business Law Section of the State Bar of Wisconsin **supports Senate Bill 218** and thanks Senator Stepp for her leadership and quick hearing on this legislation.

The Business Law Section has been working for several years on a review of Wisconsin's business entity statutes, including the state's corporations statute, Chapter 180. Senate Bill 218 reflects those years of review and is a positive step for Wisconsin to take as it positions itself for future economic development. In addition, SB 218 also includes a clean up provision relating to the "Next Economy" law from last year, which we have discovered may be causing problems.

Overall, SB 218 will:

- Bring Wisconsin corporate law in line with the laws of other states, including those of Delaware, long considered the benchmark for business-friendly statutes, New York and our neighbors of Minnesota, Michigan and Illinois.
- Permit greater flexibility and to ease administration costs in order to allow companies to avoid unnecessary filings, such as the elimination of the redundant plan of merger filing;
- Correct the "Next Economy" glitch which required for a first time ever filing of deeds (see description below);
- Fix certain valuations formulas inconsistent with the anti-takeover laws;
- Allow waivability by the board of an anti-takeover provision. Wisconsin law currently has three such provisions, two of which are already waivable. Allowing the third provision to be waived provides for consistency and eliminates costly, unnecessary meetings.
- Allow greater flexibility and to ease obligations which are feared to be missed in connection with many business combinations.

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158
(800) 728-7788 ♦ (608) 257-3838 ♦ Fax (608) 257-5502 ♦ Internet: www.wisbar.org ♦ Email: service@wisbar.org

Next Economy Glitch

Last year's "Next Economy" law (2001 WI Act 44) included a provision to allow for what are referred to as "cross-species" mergers and conversion. These are mergers or conversions between various types of business entities, such as a Limited Liability Company or corporation.

Enactment of the Next Economy law triggered a new filing requirement for companies owning real estate that merged or converted into a different form of business organization. The new provision required the filing of a real estate conveyance for all interests in real property. While no fee was due, a company owning property would now have to file numerous real estate deeds and conveyances.

The new requirement has become cumbersome for those which may desire to merge or convert a Wisconsin business. The problem becomes particularly burdensome for companies that have large amounts of property. In these instances, the company would be required to file a real estate conveyance for each of those properties. Other states do not generally require such filings.

The new filing and recording requirement of real estate conveyances is new to Wisconsin law. Prior to the Next Economy law, the statute simply stated that title to all property of the business involved in a merger was "vested in the surviving corporation without reversion or impairment." In other words, no filing requirements existed and title simply transferred to the surviving entity. The Next Economy law changed all of this, instead, requiring the surviving entity to file conveyances on each piece of property in which it had an interest—an unduly burdensome requirement.

SB 218 repeals this provision and returns Wisconsin to preexisting law.

For the above reasons the Business Law Section urges your support for Senate Bill 218.

For additional information contact Jenny Boese, State Bar Senior Government Relations Coordinator, at 608-250-6045 or email at jboese@wisbar.org.



**WISCONSIN
LAWYERS**
STATE BAR of WISCONSIN* EXPERT ADVISERS.
SERVING YOU.

MEMORANDUM

To: Senate Committee on Economic Development, Job Creation and Housing
From: Business Law Section of the State Bar of Wisconsin
Date: August 14, 2003
Re: Senate Bill 218

The Business Law Section of the State Bar of Wisconsin **supports Senate Bill 218** and thanks Senator Stepp for her leadership and quick hearing on this legislation.

The Business Law Section has been working for several years on a review of Wisconsin's business entity statutes, including the state's corporations statute, Chapter 180. Senate Bill 218 reflects those years of review and is a positive step for Wisconsin to take as it positions itself for future economic development. In addition, SB 218 also includes a clean up provision relating to the "Next Economy" law from last year, which we have discovered may be causing problems.

Overall, SB 218 will:

- Bring Wisconsin corporate law in line with the laws of other states, including those of Delaware, long considered the benchmark for business-friendly statutes, New York and our neighbors of Minnesota, Michigan and Illinois.
- Permit greater flexibility and to ease administration costs in order to allow companies to avoid unnecessary filings, such as the elimination of the redundant plan of merger filing;
- Correct the "Next Economy" glitch which required for a first time ever filing of deeds (see description below);
- Fix certain valuations formulas inconsistent with the anti-takeover laws;
- Allow waivability by the board of an anti-takeover provision. Wisconsin law currently has three such provisions, two of which are already waivable. Allowing the third provision to be waived provides for consistency and eliminates costly, unnecessary meetings.
- Allow greater flexibility and to ease obligations which are feared to be missed in connection with many business combinations.

State Bar of Wisconsin

5302 Eastpark Blvd. ♦ P.O. Box 7158 ♦ Madison, WI 53707-7158
(800) 728-7788 ♦ (608) 257-3838 ♦ Fax (608) 257-5502 ♦ Internet: www.wisbar.org ♦ Email: service@wisbar.org

Next Economy Glitch

Last year's "Next Economy" law (2001 WI Act 44) included a provision to allow for what are referred to as "cross-species" mergers and conversion. These are mergers or conversions between various types of business entities, such as a Limited Liability Company or corporation.

Enactment of the Next Economy law triggered a new filing requirement for companies owning real estate that merged or converted into a different form of business organization. The new provision required the filing of a real estate conveyance for all interests in real property. While no fee was due, a company owning property would now have to file numerous real estate deeds and conveyances.

The new requirement has become cumbersome for those which may desire to merge or convert a Wisconsin business. The problem becomes particularly burdensome for companies that have large amounts of property. In these instances, the company would be required to file a real estate conveyance for each of those properties. Other states do not generally require such filings.

The new filing and recording requirement of real estate conveyances is new to Wisconsin law. Prior to the Next Economy law, the statute simply stated that title to all property of the business involved in a merger was "vested in the surviving corporation without reversion or impairment." In other words, no filing requirements existed and title simply transferred to the surviving entity. The Next Economy law changed all of this, instead, requiring the surviving entity to file conveyances on each piece of property in which it had an interest—an unduly burdensome requirement.

SB 218 repeals this provision and returns Wisconsin to preexisting law.

For the above reasons the Business Law Section urges your support for Senate Bill 218.

For additional information contact Jenny Boese, State Bar Senior Government Relations Coordinator, at 608-250-6045 or email at jboese@wisbar.org.



State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK RD. • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933
PHONE (608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>

Jim Doyle
Governor

Michael L. Morgan
Secretary of Revenue

Senate Committee on Economic Development, Job Creation and Housing: August 14, 2003

SB 218 – Transfer of Property In Mergers and Conversions (Sen. Stepp + 6, Rep. McCormick + 17)

Description of Current Law and Proposed Change

- Under current law, the requirements for interests in real estate to vest with the surviving entity of a merger or conversion include that the merging or converging entities transfer their interests to the surviving entity and execute any required real estate transfer returns. The business entity is also required to promptly record the instrument of conveyance with the appropriate register of deeds.
- The bill deletes the requirement in the conversion and merger language in chapters 179, 180, 181 and 183 that a real estate transfer return be filed for the real estate to be vested in the surviving entity and deletes the requirement that the instrument of conveyance be promptly recorded with the register of deeds.
- Deleting the language from the conversion and merger language does not eliminate the requirement to file the real estate transfer return; the requirement still exists under Chapter 77. Removing the language relating to recording conveyances with the register of deeds would delete the requirement to record these conveyances.

Administrative Impact

- Recording title changes serve a valuable public service by identifying the actual owners of real estate. For example, a lien-holder or someone else with a potential claim against the owners of real estate who performs a search of the records could identify business entities that no longer actually exist after a merger or conversion, frustrating their efforts or increasing the cost to discover the true owners.
- The real estate transfer returns provide valuable information for local taxing authorities and the Department. Local taxing authorities use the information for property tax assessments. Over time, if these filings are not made, local assessors will have limited information to use in valuing these and other properties. Value data from real estate transfer fee returns is the Department's main source of information for determining changes in fair market value of real property in the state. This information is used in the annual process of determining assessment/sales ratios and equalized values.
- Filing the real estate transfer return and recording the deed generally occur at the same time, reducing the inconvenience associated with the filings. In addition, it is likely that in most instances other parties will require the filings. For example, title companies and

financing institutions generally require an accurate title and public record before funds are lent or title is insured.

Prepared by: Pam Walgren, 266-7817

August 11, 2003

PW:skr

I:\hearing\pw\sb218 hrg.doc