# *2005 DRAFTING REQUEST*

## Senate Substitute Amendment (SSA-SB619)

Received: **02/22/2006**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **Mike Richards**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters: **jkreye**

Subject: **Bus. Assn. - corporations**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Incorporate companion redraft

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**Instructions:**

See Attached

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**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | csundber 02/22/2006 | lkunkel 02/22/2006 | | _____ _____ | | | |
| /1 | | | rschluet 02/22/2006 | _____ _____ | lnorthro 02/22/2006 | lnorthro 02/22/2006 | |

FE Sent For:

**<END>**

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|---|---|---|---|---|---|---|---|
| /? | csundber | 1/mk 2/22 | | | | | |

FE Sent For:

**<END>**

## Sundberg, Christopher

**From:** Emery, Lynn
**Sent:** Wednesday, February 22, 2006 2:39 PM
**To:** Richards, Mike
**Cc:** Sundberg, Christopher
**Subject:** RE: LRB 05s0568 Topic: Incorporate companion redraft

Mike,

I'm forwarding this on to the drafter Chris Sundberg. He should be able to help you out.

Thanks!

---

**From:** Richards, Mike
**Sent:** Wednesday, February 22, 2006 2:01 PM
**To:** Emery, Lynn
**Subject:** RE: LRB 05s0568 Topic: Incorporate companion redraft

This is a sub to the wrong bill. It should be sub to a different bill than SB 566.

---

**From:** Emery, Lynn
**Sent:** Tuesday, February 21, 2006 5:13 PM
**To:** Sen.Kanavas
**Subject:** LRB 05s0568 Topic: Incorporate companion redraft

The attached proposal has been jacketed for introduction.

A copy has also been sent to: joseph.kreye@legis.state.wi.us;

<< File: LRB s0568_1 >> << File: LRB s0568/1 >>

LRBs0568/1
CTS&JK:lmk:pg

# SENATE SUBSTITUTE AMENDMENT ,

# TO 2005 SENATE BILL 566

AN ACT ***to repeal*** 180.0825 (2) (a), 180.0825 (5) (a) to (h) and 180.1105 (1) (a) and (b); ***to renumber*** 180.1105 (1) (c) and (d); ***to renumber and amend*** 180.0602 (3); ***to consolidate, renumber and amend*** 180.0825 (2) (intro.) and (b); ***to amend*** 179.02 (1), 179.76 (4) (c), 179.77 (6) (c), 180.0121 (1) (a) 4., 180.0121 (2), 180.0502 (3), 180.0706 (title), 180.0824 (3), 180.0825 (1), 180.1103 (1), 180.1104 (1), 180.1106 (1) (b), 180.1130 (3) (a) (intro.), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c), 180.1201 (title), 180.1201 (2), 180.1302 (4), 181.0121 (1) (a) 4., 181.0121 (2), 181.1106 (2), 181.1161 (4) (c), 183.0109 (1) (a) 5., 183.0109 (2), 183.1202 (1), 183.1205 (2) and 183.1207 (4) (c); ***to repeal and recreate*** 180.1130 (14); and ***to create*** 73.14, 179.76 (5) (bm), 179.76 (5m), 179.77 (5) (bm), 179.77 (5r), 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and (bm), 180.11045, 180.1105 (1) (bm), (cm), (dm) and (e) to (h), 180.1161 (5) (bm), 180.1201 (1) (d), 180.1302 (1) (a) 3., 181.1105 (1m), 181.1161 (5) (bm), 183.1204

(1) (cm) and 183.1207 (5) (bm) of the statutes; **relating to:** mergers, conversions, and other business combinations; merger and conversion reports; the authority of the boards of directors of business corporations and corporate committees; corporate shareholder notices and meetings; the transfer of corporate property to certain affiliates; naming limited partnerships; and providing penalties.

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***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.

**BUSINESS CORPORATIONS**

***Mergers with certain wholly owned subsidiaries***

Current law generally permits a business corporation organized under the laws of this state to reorganize as a holding company that owns the stock of one or more separately incorporated business operations. Under current law, such a reorganization may be accomplished through a transaction involving the original corporation (parent corporation), an entity created and owned by the original corporation (wholly owned subsidiary), and a third entity created and owned by the wholly owned subsidiary (indirect wholly owned subsidiary). Generally, the transaction culminates in the merger of the parent corporation with the indirect wholly owned subsidiary. The parent corporation survives the merger, and its shareholders trade their shares for shares in the wholly owned subsidiary. The wholly owned subsidiary, which owns all of the interests in the parent corporation, becomes the holding company.

With certain exceptions, current law permits a corporation to merge with or into another business entity only if, among other requirements, the corporation's shareholders approve a plan of merger adopted by the corporation's board of directors (board). With certain exceptions, this bill permits a parent corporation to merge with an indirect wholly owned subsidiary, including a corporation or limited liability company, without shareholder approval, if the following conditions are satisfied:

1. Every share in the parent corporation is converted into a share in the holding company, subject to the same rights and limitations that applied to the share prior to conversion.

2. The entity surviving the merger becomes a wholly owned subsidiary of the holding company.

3. The directors of the parent corporation become the directors of the holding company.

4. The provisions of the holding company's articles of incorporation and bylaws (or, if the holding company is a limited liability company, its operating agreement) are generally identical to those of the parent corporation's.

5. The provisions of the surviving entity's articles of incorporation and bylaws or operating agreement are generally identical to those of the parent corporation's.

6. If the surviving entity is a limited liability company, its operating agreement contains provisions that grant members certain rights enjoyed by shareholders of the parent corporation under current law or under the parent company's articles of incorporation or bylaws.

7. The parent corporation's board determines that the merger will not result in any gain or loss for federal income tax purposes.

***Other changes related to 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 (department). 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 business combination (including certain mergers) must be approved by a specified supermajority of shareholders, unless the shareholders receive a minimum price for their shares, computed under a specified formula. This bill redefines a component of the formula, the valuation date, as the day before the first public announcement of the proposed business combination.

With certain exceptions, the voting power of a person owning greater than 20 percent of a corporation's stock is currently limited to 10 percent of the full voting power of those shares, unless the corporation's articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This bill 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. Under current law, a dissenting shareholder is entitled to receive fair value if either of the following apply: 1) the corporation that issued the stock held by the dissenting shareholder (issuing corporation) is a party to a merger for which shareholder approval is required under certain provisions in current law or under the issuing corporation's articles of incorporation; or 2) the corporation is a subsidiary corporation that is merging with a parent corporation.

Under the bill, a dissenting shareholder may also obtain fair value if the issuing corporation is a parent corporation that is merging with a subsidiary, unless the

merger satisfies certain conditions specified in the bill relating to the effect of the merger on the rights of shareholders.

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.

Currently, a parent corporation that owns at least 90 percent of the outstanding interests of a subsidiary business entity may merge with the subsidiary without the approval of the parent's shareholders or the owners of the interests in the subsidiary. Under the bill, such a merger requires the approval of the parent's shareholders unless certain conditions relating to the rights of the parent's shareholders are satisfied.

***Classes or series of stock***

Under current law, a corporation's articles of incorporation may authorize the board to determine the relative rights of a class or series of shares of stock. Generally, the board may set the terms of a class or series without shareholder approval. The board may revise the terms by resolution, as long as no shares have been issued. The board may revise the terms of shares that have already been issued only by amendment to the articles of incorporation.

Under this bill, at any time after filing articles of amendment creating a class or series of shares, the board may: 1) decrease the number shares of a class or series, but not below the number of outstanding shares of the class or series; 2) eliminate a class or series, if no shares of the class or series are outstanding; or 3) increase the number of shares of a class or series, but not beyond the number of shares authorized by the articles of incorporation.

***Shareholder notices and meetings***

Current law requires a corporation to notify shareholders of certain events and information. This bill exempts a corporation from all such notice requirements as to an individual shareholder if a specified number of notices or dividend payments sent to the shareholder are returned to the corporation as undeliverable. A shareholder may reinstate the notice requirements by delivering to the corporation the shareholder's current address.

***Transfer of property to certain affiliates and other changes related to business corporations***

Current law also prescribes the conditions under which a board may transfer the corporation's property. This bill permits a board to transfer the corporation's assets to other entities that are wholly owned by the corporation, except in connection with a plan that involves a transfer of all or substantially all of the corporation's assets and that requires shareholder approval.

This bill also permits a corporation to specify in its articles of incorporation or bylaws the rules for conducting shareholder meetings, and sets default rules for corporations that do not adopt their own rules. The bill also makes changes to current law regarding the formation and membership of a committee created by a board, and the bill deletes certain restrictions on the power of such committees.

Further, the bill makes changes to current law relating to identifying a registered agent.

**OTHER CHANGES**

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 the requirement that a deed be executed and recorded. Under the bill, if a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity, the articles of merger or certificate of conversion filed with department must indicate whether a business entity that does not survive the merger or conversion has a fee simple ownership interest in real estate in this state.

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.

The bill requires that the surviving entity of a merger or conversion file a report with the Department of Revenue (DOR) that specifies the effective date of the merger or conversion, the name and address of each business entity that is a party to the merger or conversion, the name of any person at the surviving entity that DOR may contact with regard to submitting the report and the information contained in the report, the parcel identification number and location of all fee simple ownership interests in real estate located in this state acquired by the surviving entity in the merger or conversion, a certified copy of the document providing evidence of the merger or conversion, and, in the case of a conversion, a sworn statement that the ownership interests in the surviving entity are identical with the ownership interests in the original entity immediately preceding the conversion. Under the bill, forms prescribed by the department of financial institutions for articles of merger and certificates of conversion must contain a notice of the real estate reporting requirement.

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

**SECTION 1.** 73.14 of the statutes is created to read:

**73.14 Merger and conversion real estate reports. (1)** If an acquired business entity in a merger or the converted business entity in a conversion owned a fee simple ownership interest in any Wisconsin real estate immediately prior to the merger or conversion, the surviving business entity shall submit a report to the

department of revenue, on a form prescribed by the department, no later than 60 days after the effective date of the merger or conversion that provides the following information:

(a) The effective date of the merger or conversion.

(b) The name, address, and federal employer identification number of each business entity that is a party to the merger or conversion.

(c) The name, telephone number, and address of any person at the surviving business entity that the department of revenue may contact with regard to submitting the report and the information contained in the report and the address to which tax bills should be sent, if different from the address for the contact person described in this paragraph.

(d) The parcel identification number of each fee simple ownership interest in Wisconsin real estate owned by the acquired business entity in a merger or by the converted entity in a conversion and municipality in which such interest is located.

(e) In the case of a conversion, a sworn statement that, after the conversion, the ownership interests in the surviving entity are identical with the ownership interests in the original entity immediately preceding the conversion.

(f) A certified copy of the document providing evidence of the merger or conversion, as filed with the state in which the surviving entity is organized and a copy of any merger or conversion plan, regardless of whether the plan is required to be filed with the state in which the surviving entity is organized.

**(2)** (a) If a surviving entity required to submit a report under sub. (1), fails to file the report within the time provided under sub. (1), the surviving entity is subject to a penalty in an amount equal to $200 for each day that the report is late, but not to exceed $7,500, except that no penalty shall be imposed under this paragraph if the

surviving entity can show good cause for submitting a late report and if submitting a late report is not the result of the surviving entity's intentional act or omission.

(b) If a surviving entity required to submit a report under sub. (1), fails to specify in the report each municipality in which a fee simple ownership interest in Wisconsin real estate owned by the acquired business entity in a merger, or by the converted business entity in a conversion, is located, the surviving entity is subject to a penalty in an amount equal to $1,500 for each municipality not specified in the report and in which such ownership interest in located, except that no penalty shall be imposed under this paragraph if the surviving entity can show good cause for the failure to specify each municipality as described under sub. (1) (d) and if such failure is not the result of the surviving entity's intentional act or omission.

**(3)** The reports submitted under this section are confidential information, except that the department of revenue may disclose the reports and information from the reports for the sole purpose of administering and enforcing this subchapter.

**SECTION 2.** 179.02 (1) of the statutes is amended to read:

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

**SECTION 3.** 179.76 (4) (c) of the statutes is amended to read:

179.76 **(4)** (c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment~~, provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of conveyance under~~

~~s. 59.43 in the office of the register of deeds for each county in which the real estate is located~~.

**SECTION 4.** 179.76 (5) (bm) of the statutes is created to read:

179.76 **(5)** (bm) A statement indicating whether the business entity that is to be converted has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 5.** 179.76 (5m) of the statutes is created to read:

179.76 **(5m)** If the department prescribes a form for the certificate of conversion under sub. (5), the form shall indicate that if the business entity that is to be converted has a fee simple ownership interest in Wisconsin real estate, the entity is required to file a report with the department of revenue under s. 73.14.

**SECTION 6.** 179.77 (5) (bm) of the statutes is created to read:

179.77 **(5)** (bm) A statement indicating whether a business entity that merged with or into the surviving entity in the merger has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 7.** 179.77 (5r) of the statutes is created to read:

179.77 **(5r)** If the department prescribes a form for the articles of merger under sub. (5), the form shall indicate that if a business entity that is acquired in the merger has a fee simple ownership interest in Wisconsin real estate, the business entity that survives the merger is required to file a report with the department of revenue under s. 73.14.

**SECTION 8.** 179.77 (6) (c) of the statutes is amended to read:

179.77 **(6)** (c) The title to all property owned by each business entity that is a party to the merger is vested in the surviving business entity without reversion or impairment~~, provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity shall transfer~~

~~that interest to the business entity surviving the merger and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the merger shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

**SECTION 9.** 180.0121 (1) (a) 4. of the statutes is amended to read:

180.0121 **(1)** (a) 4. An application for a certificate of conversion under s. 180.1161 (5). The form prescribed under this subdivision shall indicate that if the business entity that is to be converted has a fee simple ownership interest in Wisconsin real estate, the entity is required to file a report with the department of revenue under s. 73.14.

**SECTION 10.** 180.0121 (2) of the statutes is amended to read:

180.0121 **(2)** The department may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but use of these forms is not mandatory. If the department prescribes a form for articles of merger under s. 180.1105, the form shall indicate that if a business entity that is acquired in the merger has a fee simple ownership interest in Wisconsin real estate, the business entity that survives the merger is required to file a report with the department of revenue under s. 73.14.

**SECTION 11.** 180.0502 (3) of the statutes is amended to read:

180.0502 **(3)** If the name of a registered agent changes or if the street address of ~~his or her~~ a registered agent's business office~~, he or she~~ changes, the registered agent may change the name of the registered agent or street address of the registered office of any corporation for which he ~~or~~, she, or it is the registered agent ~~by notifying.~~ To make a change under this subsection, the registered agent shall notify the corporation in writing of the change and ~~by signing, either manually or in facsimile,~~

~~and delivering~~ deliver to the department for filing a signed statement that complies with sub. (2) and recites that the corporation has been notified of the change.

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

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

**SECTION 13.** 180.0602 (3) (b) of the statutes is created to read:

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

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

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

**SECTION 14.** 180.0706 (title) of the statutes is amended to read:

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

**SECTION 15.** 180.0706 (3) of the statutes is created to read:

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

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

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

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

**SECTION 16.** 180.0708 of the statutes is created to read:

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

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

**(2)** The chairperson shall determine the order of business and the 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.

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

**SECTION 17.** 180.0824 (3) of the statutes is amended to read:

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

**SECTION 18.** 180.0825 (1) of the statutes is amended to read:

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

**SECTION 19.** 180.0825 (2) (intro.) and (b) of the statutes are consolidated, renumbered 180.0825 (2) and amended to read:

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

**SECTION 20.** 180.0825 (2) (a) of the statutes is repealed.

**SECTION 21.** 180.0825 (5) (a) to (h) of the statutes are repealed.

**SECTION 22.** 180.0825 (5) (am) and (bm) of the statutes are created to read:

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

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

**SECTION 23.** 180.1103 (1) of the statutes is amended to read:

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

**SECTION 24.** 180.1104 (1) of the statutes is amended to read:

180.1104 **(1)** A parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation or at least 90% of the outstanding interests of each class of any other subsidiary business entity may merge the subsidiary into the parent or the parent into the subsidiary without approval of the ~~shareholders of the parent or the~~ shareholders or other owners of the subsidiary and, if the conditions specified in s. 180.1302 (1) (a) 3. a. to d. are satisfied, without approval of the shareholders of the parent.

**SECTION 25.** 180.11045 of the statutes is created to read:

**180.11045 Merger of indirect wholly owned subsidiary or parent. (1)** DEFINITIONS. In this section:

(a) "Holding company" means a corporation that issues shares under sub. (2) (b) and that, during the period beginning with its incorporation and ending with the effective time of a merger under this section, was at all times a wholly owned subsidiary of the parent corporation that is party to the merger.

(b) "Indirect wholly owned subsidiary" means any of the following:

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

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

(c) "Organizational documents" means, when used in reference to a corporation, the corporation's articles of incorporation and bylaws and, when used in reference to a limited liability company, the limited liability company's operating agreement.

(d) "Parent corporation" means a corporation owning, prior to the effective time of a merger under this section, all of the outstanding shares of each class of another corporation or all of the outstanding interests of each class of another business entity.

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

(f) "Wholly owned subsidiary" means any of the following:

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

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

**(2)** MERGER AUTHORIZED. Unless the articles of incorporation of the parent corporation specifically provide otherwise, or the parent corporation is a statutory close corporation under ss. 180.1801 to 180.1837, a parent corporation may merge

with or into one of its indirect wholly owned subsidiaries pursuant to s. 180.1101 without approval of the shareholders of the parent corporation or the shareholders or members of the indirect wholly owned subsidiary if all of the following conditions are satisfied:

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

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

(c) Except as otherwise provided in this paragraph, immediately following the effective time of the merger, the organizational documents of the holding company issuing shares in the merger pursuant to sub. (2) (b) contain provisions identical to the organizational documents of the parent corporation immediately prior to the effective time of the merger. This requirement does not apply to provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, and provisions that are subject to amendment under s. 180.1002. To the extent that the 2nd sentence of s. 180.0852 applied to the parent corporation immediately prior to the effective time of the merger, the organizational documents of the holding company immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective

time of the merger, the articles of incorporation of the holding company immediately following the effective time of the merger shall contain provisions implementing s. 180.1706 (2) and (3).

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

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

(f) Except as otherwise provided in this paragraph, the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the organizational documents of the parent corporation immediately prior to the effective time of the merger. With respect to a surviving entity that is a corporation, this requirement does not apply to provisions regarding the incorporator or incorporators; the corporate name; the registered office and agent; or provisions that are subject to amendment under s. 180.1002 or any other law permitting amendment of the articles of incorporation without approval of the shareholders. With respect to a surviving entity that is a limited liability company, this requirement does not apply to provisions regarding the organizer or organizers; the entity name; the registered office and agent; references to members rather than shareholders; references to interests, units, or similar terms rather than shares; references to managers rather than directors; or provisions that are subject to amendment under any law permitting amendment of the operating agreement without approval of the members. The organizational documents of the surviving entity immediately following the effective time of the merger may specify a reduced number of classes and shares or other interests that the surviving entity is

authorized to issue. To the extent that the 2nd sentence of s. 180.0852 applied to the parent corporation immediately prior to the effective time of the merger, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective time of the merger, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions implementing s. 180.1706 (2) and (3). The organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions that specifically refer to this paragraph and that require all of the following:

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

2. If the surviving entity is a limited liability company, any act, other than the election or removal of managers of the surviving entity, for which approval of the shareholders of the surviving entity would be required under this chapter if the surviving entity were a corporation may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding

company, by the same vote as would be required for approval of the shareholders under this chapter if the surviving entity were a corporation.

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

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

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

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

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

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

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

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

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

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

(f) To the extent that shares of the parent corporation immediately prior to the effective time of the merger constituted shares of a preexisting class, the shares of the holding company immediately following the effective time of the merger constitute shares of a preexisting class to the same extent as if the holding company were the parent corporation as the parent corporation existed immediately prior to the effective time of the merger. Shares or interests of the surviving entity do not constitute shares of a preexisting class for purposes of s. 180.1705. For purposes of s. 180.1707, to the extent that shares of the parent corporation immediately prior to the effective time of the merger constituted shares of a preexisting class, the shares or interests of the surviving entity constitute shares of a preexisting class to the same extent as if the surviving entity were the parent corporation as the parent corporation existed immediately prior to the effective time of the merger.

(g) To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, the provisions apply to the holding company immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as the corporation existed immediately prior to the effective time of the merger. To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, if the surviving entity is a corporation, the provisions apply to the surviving entity immediately following the

effective time of the merger to the same extent as if the surviving entity were the parent corporation as the corporation existed immediately prior to the effective time of the merger. To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, if the surviving entity is a limited liability company, the provisions apply to the corresponding provisions of the organizational documents of the surviving entity immediately following the effective time of the merger to the same extent as if the surviving entity were the parent corporation as the corporation existed immediately prior to the effective time of the merger.

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

**SECTION 26.** 180.1105 (1) (a) and (b) of the statutes are repealed.

**SECTION 27.** 180.1105 (1) (bm), (cm), (dm) and (e) to (h) of the statutes are created to read:

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

(cm) A statement that a plan of merger or share exchange has been approved and adopted by each corporation that is a party to the merger or share exchange as required under s. 180.1103 or 180.1104, as applicable.

(dm) The name of the surviving or acquiring corporation.

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

(f) A statement that the executed plan of merger or share exchange is on file at the principal place of business of the surviving or acquiring corporation.

(g) A statement that the surviving or acquiring corporation will provide a copy of the plan of merger or share exchange, upon request and without cost, to any shareholder of a corporation that was a party to the merger or share exchange or, upon payment to the surviving or acquiring corporation of an amount equal to the cost of producing the copy, to any other interested person.

(h) In the case of a merger, a statement indicating whether a business entity that merged with or into the surviving entity in the merger has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 28.** 180.1105 (1) (c) and (d) of the statutes are renumbered 180.1105 (1) (am) and (i).

**SECTION 29.** 180.1106 (1) (b) of the statutes is amended to read:

180.1106 **(1)** (b) The title to all property owned by each business entity that is party to the merger is vested in the surviving business entity without reversion or impairment~~, provided that, if a merging business entity has an interest in real estate~~

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

**SECTION 30.** 180.1130 (3) (a) (intro.) of the statutes is amended to read:

180.1130 **(3)** (a) (intro.) Unless the merger or share exchange is subject to s. 180.1104 or s. 180.11045, does not alter the contract rights of the shares as set forth in the articles of incorporation or does not change or convert in whole or in part the outstanding shares of the resident domestic corporation, a merger or share exchange of the resident domestic corporation or a subsidiary of the resident domestic corporation with any of the following:

**SECTION 31.** 180.1130 (14) of the statutes is repealed and recreated to read:

180.1130 **(14)** "Valuation date" means the time when the closing price of the stock is determined on the day before the first public announcement of the proposed business combination.

**SECTION 32.** 180.1140 (11) of the statutes is amended to read:

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

**SECTION 33.** 180.1150 (2) of the statutes is amended to read:

180.1150 **(2)** Unless otherwise provided in the articles of incorporation of a resident domestic corporation or otherwise specified by the board of directors of the resident domestic corporation in accordance with s. 180.0824 (3), and except as provided in sub. (3) or as restored under sub. (5), the voting power of shares of a

resident domestic corporation held by any person, including shares issuable upon conversion of convertible securities or upon exercise of options or warrants, in excess of 20% of the voting power in the election of directors shall be limited to 10% of the full voting power of those shares.

**SECTION 34.** 180.1161 (4) (c) of the statutes is amended to read:

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

**SECTION 35.** 180.1161 (5) (bm) of the statutes is created to read:

180.1161 **(5)** (bm) A statement indicating whether the business entity that is to be converted has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 36.** 180.1201 (title) of the statutes is amended to read:

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

**SECTION 37.** 180.1201 (1) (d) of the statutes is created to read:

180.1201 **(1)** (d) 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 under s. 180.1202.

**SECTION 38.** 180.1201 (2) of the statutes is amended to read:

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

**SECTION 39.** 180.1302 (1) (a) 3. of the statutes is created to read:

180.1302 **(1)** (a) 3. The issuer corporation is a parent that is merged with its subsidiary under s. 180.1104. This subdivision does not apply if all of the following are true:

a. The articles of incorporation of the surviving corporation do not differ from the articles of incorporation of the parent before the merger, except for amendments specified in s. 180.1002 (1) to (9).

b. Each shareholder of the parent whose shares were outstanding immediately before the effective time of the merger holds the same number of shares with identical designations, preferences, limitations, and relative rights, immediately after the merger.

c. The number of voting shares, as defined in s. 180.1103 (5) (a) 2., outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights or warrants issued pursuant to the merger, do not exceed by more than 20 percent the total number of voting shares of the parent outstanding immediately before the merger.

d. The number of participating shares, as defined in s. 180.1103 (5) (a) 1., outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued

pursuant to the merger or the exercise of rights or warrants issued pursuant to the merger, do not exceed by more than 20 percent the total number of participating shares of the parent outstanding immediately before the merger.

**SECTION 40.** 180.1302 (4) of the statutes is amended to read:

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

**SECTION 41.** 181.0121 (1) (a) 4. of the statutes is amended to read:

181.0121 **(1)** (a) 4. An application for a certificate of conversion under s. 181.1161 (5). The form prescribed under this subdivision shall indicate that if the business entity that is to be converted has a fee simple ownership interest in Wisconsin real estate, the entity is required to file a report with the department of revenue under s. 73.14.

**SECTION 42.** 181.0121 (2) of the statutes is amended to read:

181.0121 **(2)** PERMISSIVE FORMS. The department may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but use of these forms is not mandatory. If the department prescribes a form for articles of merger under s. 181.1105, the form shall indicate that if a business entity that is acquired in the merger has a fee simple ownership interest in Wisconsin real estate, the business entity that survives the merger is required to file a report with the department of revenue under s. 73.14.

**SECTION 43.** 181.1105 (1m) of the statutes is created to read:

181.1105 **(1m)** STATEMENT AS TO PROPERTY OWNED BY NONSURVIVING ENTITY. A statement indicating whether a business entity that merged with or into the surviving entity in the merger has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 44.** 181.1106 (2) of the statutes is amended to read:

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

**SECTION 45.** 181.1161 (4) (c) of the statutes is amended to read:

181.1161 **(4)** (c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment~~, provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of conveyance under~~

~~s. 59.43 in the office of the register of deeds for each county in which the real estate is located~~.

**SECTION 46.** 181.1161 (5) (bm) of the statutes is created to read:

181.1161 **(5)** (bm) A statement indicating whether the business entity that is to be converted has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 47.** 183.0109 (1) (a) 5. of the statutes is amended to read:

183.0109 **(1)** (a) 5. An application for a certificate of conversion under s. 183.1207 (5). The form prescribed under this subdivision shall indicate that if the business entity that is to be converted has a fee simple ownership interest in Wisconsin real estate, the entity is required to file a report with the department of revenue under s. 73.14.

**SECTION 48.** 183.0109 (2) of the statutes is amended to read:

183.0109 **(2)** The department may prescribe, and furnish on request, forms for other documents required or permitted to be filed by this chapter, but use of these forms is not mandatory. If the department prescribes a form for articles of merger under s. 183.1204, the form shall indicate that if a business entity that is acquired in the merger has a fee simple ownership interest in Wisconsin real estate, the business entity that survives the merger is required to file a report with the department of revenue under s. 73.14.

**SECTION 49.** 183.1202 (1) of the statutes is amended to read:

183.1202 **(1)** Unless otherwise provided in an operating agreement and except as provided in s. 180.11045 (2), a limited liability company that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of members as described in s. 183.0404 (1) (a). Unless otherwise provided in an operating agreement or waived by the members, a limited liability company may obtain the

approving vote of its members only after providing the members with not less than 10 nor more than 50 days' written notice of its intent to merge accompanied by the plan of merger.

**SECTION 50.** 183.1204 (1) (cm) of the statutes is created to read:

183.1204 **(1)** (cm) A statement indicating whether a business entity that merged with or into the surviving entity in the merger has a fee simple ownership interest in any Wisconsin real estate.

**SECTION 51.** 183.1205 (2) of the statutes is amended to read:

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

**SECTION 52.** 183.1207 (4) (c) of the statutes is amended to read:

183.1207 **(4)** (c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment~~, provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of conveyance under~~

~~s. 59.43 in the office of the register of deeds for each county in which the real estate is located~~.

**SECTION 53.** 183.1207 (5) (bm) of the statutes is created to read:

183.1207 **(5)** (bm) A statement indicating whether the business entity that is to be converted has a fee simple ownership interest in any Wisconsin real estate.

**(END)**