

CHAPTER 2

PUBLIC CORPORATIONS AND BOARDS OF DIRECTORS

S.F. 325

AN ACT relating to the boards of directors of public corporations, and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 490.140, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 21A. “Public corporation” means a corporation that has a class of voting stock that is listed on a national securities exchange or held of record by more than two thousand shareholders.

Sec. 2. Section 490.702, subsection 5, unnumbered paragraph 1, Code 2011, is amended to read as follows:

Notwithstanding subsections 1 through 4, a public corporation ~~which has a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations — national market system, or held of record by more than two thousand shareholders,~~ is required to hold a special meeting only upon the occurrence of either of the following:

Sec. 3. Section 490.803, subsections 2 and 3, Code 2011, are amended to read as follows:

2. *a.* The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

b. Notwithstanding paragraph “a”, the number of directors of a public corporation subject to section 490.806A, subsection 1, shall be increased or decreased only by the affirmative vote of a majority of its board of directors.

3. Directors are elected at the first annual shareholders’ meeting and at each annual meeting thereafter unless their terms are staggered under section 490.806 or 490.806A.

Sec. 4. Section 490.805, subsections 2 and 4, Code 2011, are amended to read as follows:

2. The terms of all other directors expire at the next annual shareholders’ meeting following their election unless their terms are staggered under section 490.806 or 490.806A.

4. The term of a director elected to fill a vacancy expires at the next shareholders’ meeting at which directors are elected, except as provided in section 490.806A.

Sec. 5. Section 490.806, Code 2011, is amended to read as follows:

490.806 Staggered terms for directors.

The Except as otherwise provided in section 490.806A, a corporation’s articles of incorporation may provide for staggering the terms of its directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders’ meeting after their election, the terms of the second group expire at the second annual shareholders’ meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders’ meeting after their election. At each annual shareholders’ meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Sec. 6. **NEW SECTION. 490.806A Public corporations — staggered terms.**

1. Except as provided in subsection 2, and notwithstanding anything to the contrary in the articles of incorporation or bylaws of a public corporation, the terms of directors of a public corporation shall be staggered by dividing the number of directors into three groups, as nearly equal in number as possible. The first group shall be referred to as “class I directors”, the second group shall be referred to as “class II directors”, and the third group shall be referred to as “class III directors”.

a. On or before the date on which a public corporation first convenes an annual shareholders' meeting following the time the public corporation becomes subject to this subsection, the board of directors of the public corporation shall by majority vote designate from among its members directors to serve as class I directors, class II directors, and class III directors.

b. The terms of directors serving in office on the date that the public corporation becomes subject to this subsection shall be as follows:

(1) Class I directors shall continue in office until the first annual shareholders' meeting following the date that the public corporation becomes subject to this subsection, and until their successors are elected. The shareholders' meeting shall be conducted not less than eleven months following the last annual shareholders' meeting conducted before the public corporation became subject to this subsection.

(2) Class II directors shall continue in office until one year following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

(3) Class III directors shall continue in office until two years following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

c. At each annual shareholders' meeting of a public corporation subject to this subsection, the successors to the class of directors whose term expires at that meeting shall be elected to hold office for a term of three years following such meeting and until their successors are elected.

d. The board of directors of a public corporation subject to this subsection shall adopt an amendment to its articles of incorporation as provided in section 490.1005A.

e. Notwithstanding this subsection, the articles of incorporation of a public corporation may confer upon the holders of preferred shares the right to elect one or more directors pursuant to section 490.804, who shall serve for such term, and have such voting powers, as shall be stated in the articles of incorporation.

2. Every public corporation shall be subject to subsection 1, unless it is exempt pursuant to this subsection.

a. (1) In order for a public corporation in existence on the effective date of this Act to be exempt from subsection 1, its board of directors must adopt a resolution or take action under section 490.821 expressly making an election to be exempt from the provisions of subsection 1. Such resolution or action must be adopted or taken within forty days after the effective date of this Act.

(2) Upon adopting the resolution or taking board action under section 490.821, the public corporation is no longer subject to subsection 1, effective immediately unless otherwise provided for in the resolution or by the board action.

b. If on the effective date of this Act the articles of incorporation of the public corporation already provide for staggering the terms of its directors under section 490.806, the public corporation shall be exempt from the provisions of subsection 1. In such event, no further corporate action is required, and the public corporation is not required to amend or modify any provision of its articles of incorporation or bylaws in order to be exempt from subsection 1.

c. A corporation that becomes a public corporation on or after the effective date of this Act is exempt from the provisions of subsection 1.

Sec. 7. Section 490.810, Code 2011, is amended by adding the following new subsection:
NEW SUBSECTION. 1A. For a public corporation subject to section 490.806A, subsection 1, a vacancy on the board of directors, including but not limited to a vacancy resulting from an increase in the number of directors, shall be filled solely by the affirmative vote of a majority of the remaining directors, even though less than a quorum of the board.

Sec. 8. **NEW SECTION. 490.1005A Public corporation — amendment by board of directors.**

1. The board of directors of a public corporation subject to section 490.806A, subsection 1, shall adopt an amendment to its articles of incorporation which includes all of the following:

a. A statement that the public corporation is subject to section 490.806A, subsection 1.

b. Any necessary changes to the articles of incorporation required to implement the requirements of section 490.806A, subsection 1, including by staggering the terms of the board of directors as described in that subsection.

2. Any amendment to the articles of incorporation as provided in subsection 1 of this section shall be made without shareholder approval.

Sec. 9. REPEAL.

1. This Act is repealed on December 31, 2014.

2. However, a public corporation that has amended its articles of incorporation under section 490.1005A prior to the date of repeal shall continue to stagger the terms of its directors as provided in section 490.806A, subsection 1, until such time as the articles of incorporation are specifically amended to remove or modify the staggered terms in accordance with the procedures of chapter 490.

Sec. 10. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved March 23, 2011