

**CHAPTER 17**  
**COOPERATIVE ASSOCIATIONS — QUALIFIED MERGERS**  
**AND OTHER MATTERS**

S.F. 299

**AN ACT** relating to cooperative associations and corporations by providing for operations and procedures, including providing for mergers, and providing an effective date.

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

Section 1. NEW SECTION. 490.1109 QUALIFIED MERGER.

A corporation and a cooperative association organized under chapter 499 may merge as provided in section 499.69A.

Sec. 2. Section 499.13, Code 1997, is amended to read as follows:

499.13 MEMBERSHIP — ELIGIBILITY.

~~No~~ A membership or share of common stock shall ~~ever~~ not be issued to, or held by, any ~~party~~ not ~~person~~ unless the person is eligible ~~to~~ for membership in the association under its articles. ~~Individuals~~ A person may be ~~made~~ eligible only if ~~they are~~ the person is engaged in producing ~~products~~ a product marketed by the association, ~~or if they~~ the person customarily ~~consume~~ consumes or ~~use~~ uses the supplies or commodities ~~it~~ that the association handles, or ~~use~~ the person uses the services ~~it~~ that the association renders. ~~Farm tenants, and landlords~~ A farm tenant or landlord who ~~receive~~ receives a share of agricultural products as rent, may be ~~made~~ eligible ~~to~~ for membership in ~~an~~ an agricultural ~~associations~~ association as ~~producers~~ a producer. ~~Other associations~~ A cooperative association engaged in any directly or indirectly related activity may be ~~made~~ eligible ~~to~~ for membership. ~~Federated associations~~ An association may be formed ~~whose membership is restricted~~ which includes among its members cooperative associations or restricts its membership to cooperative associations.

Sec. 3. Section 499.16, Code 1997, is amended to read as follows:

499.16 SUBSCRIPTIONS — ISSUING CERTIFICATES.

If ~~permitted by the association's~~ the association's articles ~~permit~~ of incorporation, any eligible subscriber for common stock or membership may vote and be treated as a member, after making part payment ~~therefor~~ for the common stock or membership in cash ~~and~~, giving the subscriber's note for the balance, ~~and satisfying any other requirement for the subscription as set forth in the articles.~~ Such subscriptions A subscription may be forfeited as provided in section 499.32. ~~No stock~~ Stock or a membership certificate shall ~~not~~ be issued until payment for the stock or membership certificate is fully paid for made. ~~No~~ A subscriber shall ~~not~~ hold office until the subscriber's certificate has been issued.

Sec. 4. Section 499.22, Code 1997, is amended to read as follows:

499.22 CAPITAL STOCK.

~~Associations~~ An association with capital stock may divide the shares into common and preferred stock. Par value stock shall not be issued for less than par. The general corporation laws shall govern the consideration for which no-par stock is issued. If the articles so provide, common stock may be issued in two classes, voting and nonvoting. Voting stock shall be issued to all agricultural producers and nonvoting stock to all other members. Voting stock or nonvoting stock may be issued to a cooperative association as provided in the cooperative association's articles of incorporation. Nonvoting stock shall have all privileges of membership except the right to vote. Preferred stock held by nonmembers shall not exceed in amount that held by members.

Sec. 5. Section 499.36, subsections 1 and 2, Code 1997, are amended to read as follows:

1. The affairs of each association shall be managed by a board of ~~not less than five~~ directors, who.

1A. a. A director must be members a member of the association or officers an officer or members a member of a member-association. They A director shall be elected by the members as prescribed by the association's articles prescribe of incorporation.

b. At least five directors shall serve on the association's board. The number of directors shall be established in accordance with the association's articles of incorporation or by-laws. If a board has the power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the members. Only the members may increase or decrease by more than thirty percent the number of directors last approved by the members.

c. The articles of incorporation may establish a variable range for the size of the board by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum number, by the members or the board. After shares are issued, only the members may change the range for the size of the board, change from a fixed to a variable-range-size board, or change from a variable-size to a fixed-size board.

2. a. Unless the articles or bylaws otherwise provide, vacancies in if a vacancy occurs on the board shall, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by the remaining directors, the director thus selected to serve for the remainder of the vacant term. any of the following:

(1) The shareholders.

(2) The board.

(3) If the directors remaining in office constitute fewer than a quorum of the board, the directors may fill the vacancy by the affirmative vote of all the directors remaining in office.

b. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. The new director shall not take office until the vacancy occurs.

Sec. 6. Section 499.40, subsection 5, Code 1997, is amended to read as follows:

5. The following information regarding the directors:

a. Their number of directors, their.

b. Whether there is a fixed number or a variable range as provided in section 499.36. If a variable range is established, the information shall include the minimum and maximum number.

c. Their qualifications and.

d. Their terms of office, and how.

e. How they shall be chosen and removed from office.

Sec. 7. Section 499.61, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. "Qualified corporation" means a corporation organized and existing under chapter 490, which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a)(2) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141j(a) or 7 U.S.C. § 291.

NEW SUBSECTION. 3B. "Qualified merger" means the uniting of one or more cooperative associations with one or more qualified corporations to form one cooperative association or qualified corporation, in such a manner that one entity participating in the merger continues to exist and absorbs the others, with the others ceasing to exist as cooperative or corporate entities.

NEW SUBSECTION. 3C. "Qualified survivor" means the cooperative association or qualified corporation which continues to exist after a qualified merger.

Sec. 8. Section 499.64, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The board of directors of each a cooperative association, upon approving a plan of merger or consolidation, shall, by motion or resolution, direct that the plan be submitted to a vote at a meeting of members, which may be either an annual or special meeting. Written notice

shall be given not less than twenty days prior to the meeting, either personally or by mail to each voting member and shareholder of record. The notice shall state the time, place, and purpose of the meeting, and a summary of the plan of merger or consolidation shall be included in or enclosed with the notice.

Sec. 9. NEW SECTION. 499.69A QUALIFIED MERGERS.

1. One or more cooperative associations and one or more qualified corporations may participate in a qualified merger as provided in this section.

2. Each participating cooperative association and qualified corporation must approve a written plan of qualified merger.

a. The plan shall set forth all of the following:

(1) The name of each cooperative association and qualified corporation participating in the qualified merger, and the name of the qualified survivor.

(2) The terms and conditions of the qualified merger.

(3) The manner and basis of converting the interests, including shares or other securities, and obligations in each nonsurviving cooperative association or qualified corporation into the interests and obligations of the qualified survivor.

(4) Any amendments to the articles of incorporation of the qualified survivor as are desired to be effected by the qualified merger, or a statement that no amendment is desired.

(5) The date that the qualified merger becomes effective, if the date is different than the date when a certificate of merger is to be issued for a cooperative association, or if the date is different than the date when the articles of merger are filed with the secretary of state for a qualified corporation.

(6) Other provisions relating to the qualified merger as are deemed necessary or desirable.

b. A proposed plan for a qualified merger complying with the requirements of this section shall be approved as follows:

(1) For a cooperative association which is a party to the proposed qualified merger, the cooperative association shall approve the plan as provided in this chapter.

(2) For a qualified corporation which is a party to the proposed qualified merger, the qualified corporation shall approve the plan as provided in chapter 490.

c. After the proposed plan for the qualified merger is approved, a cooperative association or qualified corporation may abandon the merger in the manner provided in the plan, prior to the filing of the articles of merger.

3. After a proposed plan of the qualified merger is approved, the qualified survivor shall deliver articles of merger for the qualified merger to the secretary of state for filing. The articles of merger shall be executed by each cooperative association and qualified corporation which is a party to the qualified merger. The articles of merger shall set forth all of the following:

a. The name of each cooperative association and qualified corporation which is a party to the qualified merger.

b. The plan for the qualified merger.

c. The effective date of the qualified merger, if later than the date of filing the articles of merger.

d. The name of the qualified survivor.

e. A statement that the plan for the qualified merger was approved by each participating cooperative association and qualified corporation in a manner required for the cooperative association and qualified corporation as provided in this section.

4. For a surviving cooperative association, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state and the issuance of a certificate of merger pursuant to section 499.68 or the date stated in the articles of merger, whichever is later. For a surviving qualified corporation, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state pursuant to section 490.1105 or the date stated in the articles, whichever is later.

5. The effect of a qualified merger for a qualified survivor which is a cooperative association shall be as provided for in this chapter. The effect of a qualified merger for a qualified survivor which is a qualified corporation shall be as provided for corporations under chapter 490.

6. The provisions governing the right of a shareholder or member of a cooperative association to object to a merger or the right of a member to dissent and obtain payment of the fair value of an interest in the cooperative association in the case of a merger as provided in this chapter shall apply to a qualified merger. The provisions governing the right of a shareholder of a corporation to dissent from and obtain payment of the fair value of the shareholder's shares in the case of a merger as provided in division XIII of chapter 490 shall apply to a qualified merger.

7. A foreign cooperative association may participate in a qualified merger as provided in this section, if the foreign cooperative association complies with the requirements for a cooperative association under this section and the requirements for a foreign cooperative association under section 499.69. A foreign corporation may participate in a qualified merger as provided in this section if it complies with the requirements of a qualified corporation under this section and the requirements for a foreign corporation under section 490.1107.

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

Approved April 3, 1997

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## CHAPTER 18

### SCHOOL FINANCE — REGULAR PROGRAM DISTRICT COST GUARANTEE

*S.F. 189*

**AN ACT** extending the regular program district cost guarantee for school districts for two years, and providing an effective date.

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

Section 1. Section 257.14, subsection 1, Code 1997, is amended to read as follows:

1. For the budget years commencing ~~July 1, 1991, July 1, 1992, July 1, 1993, July 1, 1994,~~ July 1, ~~1995~~ 1997, and July 1, ~~1996~~ 1998, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the department of management shall provide a budget adjustment for that district for that budget year that is equal to the difference.

Sec. 2. Section 257.14, subsection 3, Code 1997, is amended by striking the subsection.

Sec. 3. This Act, being deemed of immediate importance, takes effect upon enactment for the purpose of computations required for the budget year beginning July 1, 1997.

Approved April 9, 1997