

MAR 12 1986

Place On Calendar

HOUSE FILE 2448
BY COMMITTEE ON AGRICULTURE

(Formerly House Study Bill 777)
Substituted for S.F. 2078

Passed House, Date 3-20-86 (p.938) Passed Senate, Date 4-24-86 (p.1373)
Vote: Ayes 65 Nays 28 Vote: Ayes 45 Nays 1

Approved May 20 1986

Motion to Rescind (p.940) H/O 3/27 (p.1058)

A BILL FOR

1 An Act relating to cooperative associations.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2448

5542, 5534 ?

1 Section 1. Section 499.2, Code 1985, is amended by adding
2 the following new unnumbered paragraphs:

3 NEW UNNUMBERED PARAGRAPH. "Local deferred patronage
4 dividends" of an association means that portion of each
5 member's deferred patronage dividends described in section
6 499.30 which the board of directors of the association has
7 determined arise from earnings of the association other than
8 earnings which have been allocated to the association but
9 which have not been paid in cash to the association by other
10 cooperative organizations of which the association is a
11 member. However, if the board of directors fails to make a
12 determination with respect to a deceased member's deferred
13 patronage dividends prior to the member's death, then "local
14 deferred patronage dividends" means that portion of the
15 member's deferred patronage dividends which is proportional to
16 the deferred patronage dividends described in section 499.30
17 less the amount of undistributed net earnings which have been
18 allocated to the association by other cooperative
19 organizations of which the association is a member, compared
20 to all deferred patronage dividends of the association.

21 NEW UNNUMBERED PARAGRAPH. "Local deferred patronage
22 preferred stock" of an association means preferred stock, if
23 any, of an association which has been issued in exchange for
24 local deferred patronage dividends. If preferred stock has
25 been issued in exchange for deferred patronage dividends prior
26 to the time the board of directors of the association has
27 determined the portion of each member's deferred patronage
28 dividend which represents local deferred patronage dividends,
29 then the board of directors may reasonably determine what
30 portion of the preferred stock was issued in exchange for
31 local deferred patronage dividends and the portion which was
32 issued for other deferred patronage dividends.

33 Sec. 2. Section 499.30, unnumbered paragraph 3, Code 1985,
34 is amended to read as follows:

35 At least ten percent of the remaining earnings must be

1 added to surplus until surplus equals either thirty percent of
2 the total of all capital paid in for stock or memberships,
3 plus all unpaid patronage dividends, plus certificates of
4 indebtedness payable upon liquidation, earnings from nonmember
5 business, and earnings arising from the earnings of other
6 cooperative organizations of which the association is a
7 member, or one thousand dollars, whichever is greater. No
8 additions shall be made to surplus ~~whenever~~ when it exceeds
9 either fifty percent of ~~such~~ the total, or one thousand
10 dollars, whichever is greater.

11 Sec. 3. Section 499.30, unnumbered paragraph 6, Code 1985,
12 is amended to read as follows:

13 Notwithstanding the articles of incorporation of any
14 association ~~now-in-effect~~, for each taxable year of the
15 association beginning after December 31, 1962, all remaining
16 net earnings shall be allocated to the account of each member,
17 including subscribers described in section 499.16, ratably in
18 proportion to the business the member ~~had-done~~ did with the
19 association during ~~such~~ that year. The directors shall
20 determine, or the articles of incorporation or bylaws of the
21 association may specify, the percentage or the amount of ~~said~~
22 the allocation that currently shall be paid in cash, ~~provided~~
23 ~~that-so-long-as~~. However, so long as there are unpaid local
24 deferred patronage dividends of deceased members for prior
25 years, the amount currently payable in cash shall not exceed
26 twenty percent of ~~said~~ the allocation. All ~~said~~ the remaining
27 allocation not ~~so~~ paid in cash shall be transferred to a
28 revolving fund and credited to ~~said~~ the members and
29 subscribers. ~~Such~~ The credits in the revolving fund are
30 ~~herein~~ referred to in this chapter as deferred patronage
31 dividends.

32 Sec. 4. Section 499.33, Code 1985, is amended to read as
33 follows:

34 499.33 USE OF REVOLVING FUND.

35 The directors may use the revolving fund to pay the

1 obligations or add to the capital of the association or retire
2 its preferred stock. In such that event the deferred
3 patronage dividends credited to members ~~shall~~ constitute a
4 charge on the revolving fund, and on future additions thereto
5 to the revolving fund, and on the corporate assets,
6 subordinate to existing or future creditors and preferred
7 stockholders ~~then-or-thereafter-existing~~. Deferred patronage
8 dividends for any year ~~shall~~ have priority over those for any
9 subsequent year years. However, prior to any other payments
10 of deferred patronage dividends or redemption of preferred
11 stock held by members, the directors of co-operative
12 associations, other than those co-operative associations which
13 are public utilities as defined in section 476.1 ~~and-other~~
14 ~~than-these-co-operative-associations-which-are-public~~
15 ~~utilities-which-are-exempt-from-rate-regulation-as-provided-in~~
16 ~~that-section~~, shall pay local deferred patronage dividends and
17 redeem local deferred patronage preferred stock, of deceased
18 natural persons who were members, and may pay deferred
19 patronage dividends or may redeem preferred stock of deceased
20 natural persons who were members or of members who become
21 ineligible, without reference to the order of priority.
22 Directors of co-operative associations which are public
23 utilities as defined in section 476.1 ~~and-directors-of-co-~~
24 ~~operative-associations-which-are-public-utilities-exempt-from~~
25 ~~rate-regulation-as-provided-in-that-section~~, may pay deferred
26 patronage dividends and redeem preferred stock, of deceased
27 natural persons who were members, and may pay deferred
28 patronage dividends or redeem preferred stock of members who
29 become ineligible without reference to priority. Payment of
30 deferred patronage dividends or the redemption of preferred
31 stock of ineligible members shall be carried out to the extent
32 and in the manner specified in the bylaws of the association.

5481> 33 Sec. 5. Section 499.36, subsection 4, Code 1985, is
34 amended to read as follows:

35 4. Directors shall be elected by districts, if the

1 articles specify the districts, the number of directors from
2 each district, the manner of nomination, redistricting, or
3 reapportionment, and whether directors ~~shall~~ are to be
4 directly elected by the members or by delegates chosen by
5 them. Districts shall be ~~so~~ formed and redistricting shall be
6 ordered, from time to time, so that the districts contain as
7 nearly as possible an equal number of members. The bylaws
8 shall describe the district boundaries currently in effect.

9 Sec. 6. Section 499.48, Code 1985, is amended by striking
10 the section and inserting in lieu thereof the following:

11 499.48 DISTRIBUTION IN LIQUIDATION.

12 On dissolution or liquidation, the assets of the
13 association shall be used to pay liquidation expenses first,
14 next the association's obligations other than patronage
15 dividends or patronage dividend certificates which it has
16 issued, and the remainder shall be distributed in the
17 following priority:

18 1. To pay to each person the full amount originally paid
19 by that person in cash for stock or other equity interest in
20 the association.

21 2. To pay to each person in proportion to the total of
22 each person's revolving fund, stock, or other equity interest
23 in the association remaining after the payment under
24 subsection 1.

25 In applying subsections 1 and 2, all classes of stock, all
26 revolving funds, and all other equity interests in the
27 association shall be treated equally based on their stated
28 values. However, an association may establish its own method
29 of distributing the assets remaining, after paying liquidation
30 expenses and obligations other than patronage dividends or
31 patronage dividend certificates which it has issued, in
32 articles of incorporation adopted, amended, or restated after
33 the effective date of this Act.

5487
34 Sec. 7. Section 499.65, Code 1985, is amended to read as
35 follows:

1 499.65 OBJECTION OF MEMBERS -- PURCHASE OF SHARE.

2 If a voting member or voting shareholder of a co-operative
3 association which is a party to a merger or consolidation
4 files with the co-operative association, prior to or at the
5 meeting of members at which the plan is submitted to a vote, a
6 written objection to the plan of merger or consolidation, and
7 ~~does-not-vote-in-favor-of~~ votes in opposition to the plan, and
8 ~~such the~~ member or shareholder, within twenty days after the
9 merger or consolidation is approved by the other members,
10 makes written demand on the surviving or new association for
11 payment of the fair value of that member's or shareholder's
12 interest as of the day prior to the date on which the vote was
13 taken approving the merger or consolidation, the surviving or
14 new association shall pay to ~~such the~~ member or shareholder,
15 upon surrender of that person's certificate of membership or
16 shares of stock, the fair value of that person's interest.
17 ~~Any A~~ member or shareholder ~~failing who fails~~ to make demand
18 within the twenty-day period ~~shall-be~~ is conclusively presumed
19 to have consented to the merger or consolidation and ~~shall-be~~
20 is bound by its terms.

21 In the event ~~any that a~~ dissenting member or shareholder
22 ~~shall-apply-for-membership-in~~ does business with the surviving
23 or new association, before payment has been made for that
24 person's membership or stock, the dissenting member or
25 shareholder ~~shall-be~~ is deemed to have consented to the merger
26 or consolidation and to have waived all further rights as a
27 dissenting member or shareholder.

28 Sec. 8. Section 499.66, Code 1985, is amended by striking
29 the section and inserting in lieu thereof the following:

30 499.66 VALUE DETERMINED.

31 1. As used in this section:

32 a. "Dissenting member" means a voting member who votes in
33 opposition to the plan of merger or consolidation and who
34 makes a demand for payment of the fair value under section
35 499.65.

1 b. "Old association" means the association in which the
2 member owns or owned a membership.

3 c. "New association" means the surviving or new asso-
4 ciation after the merger or consolidation.

5 d. "Issue price" means the amount paid for an interest in
6 the old association or the amount stated in a notice of
7 allocation of patronage dividends.

8 e. "Fair market value" means the lesser of the cash price
9 that would be paid by a willing buyer to a willing seller,
548210 neither being under any compulsion to buy or sell, and the
11 issue price of the dissenting member's membership or common
12 stock, deferred patronage dividends, and preferred stock.

13 2. Within twenty days after the merger or consolidation is
14 effected, the new association shall make a written offer to
15 each dissenting member to pay a specified sum deemed by the
16 new association to be the fair value of that dissenting
17 member's interest in the old association. This offer shall be
18 accompanied by a balance sheet of the old association as of
19 the latest available date, a profit and loss statement of the
20 old association for the twelve-month period ending on the date
21 of this balance sheet, and a list of the dissenting member's
22 interests in the old association. If the dissenting member
23 does not agree that the sum stated in this notice represents
24 the fair value of the member's interest, then the member may
25 file a written objection with the new association within
26 twenty days after receiving this notice. A dissenting member
27 who fails to file this objection within the twenty-day period
28 is conclusively presumed to have consented to the fair value
29 stated in the notice.

30 If the surviving or new association receives any objections
31 to fair values, then within ninety days after the merger or
32 consolidation is effected, the new association shall file a
33 petition in the Iowa district court asking for a finding and
34 determination of the fair value of each type of equity. The
35 action shall be prosecuted as an equitable action.

1 The fair value shall be determined as of the day preceding
2 the merger or consolidation by subtracting the old asso-
3 ciation's debts from the fair market value of the old
4 association's assets, and dividing the remainder by the total
5 issue price of all memberships, common stock, preferred stock,
6 and revolving funds. The quotient from this division shall be
7 multiplied by the total issue price of a dissenting member's
8 membership, common stock, preferred stock, and revolving fund
9 interest to determine the fair value of that dissenting
10 member's interest in the old association.

11 3. The new association shall pay to each dissenting member
12 in cash within sixty days after the merger or consolidation
13 the amount paid in cash by the dissenting member for that
14 member's interest in the old association. The new association
15 shall pay the remainder of each dissenting member's fair value
16 at the same time other payments of deferred patronage
17 dividends or redemption of preferred stock are made, but in
18 any event within fifteen years after the merger or
19 consolidation. A dissenting member who is a natural person
20 who dies before receiving the fair value shall have all of the
21 person's fair value paid with the same priority as if the
22 person was a member at the time of death.

55017

23 EXPLANATION

24 Section 1 provides additional definitions to allow a
25 distinction between patronage arising from operations of the
26 local cooperative and patronage arising from operations of
27 other cooperative organizations of which the local cooperative
28 may be a member.

29 Section 2 allows the cooperative to include earnings from
30 nonmember business and earnings from regional cooperatives as
31 it determines its proper minimum and maximum levels of
32 surplus.

33 Sections 3 and 4 address the payment of equity in the
34 cooperative to estates of deceased members as it concerns the
35 portion coming from regional cooperatives. The change would

1 relieve the cooperative from paying cash out of local funds to
2 cover payments to estates for that portion of their equity
3 promised by the regional for payment at some future date.

4 Section 5 makes it unnecessary for the cooperative to amend
5 its articles of incorporation each time it seeks to reap-
6 portion its members into districts of more equal size. The
7 change would allow a bylaw modification to be sufficient.

8 Section 6 rewrites the method of determining priorities in
9 distribution of a cooperative's assets during liquidation. It
10 would give higher priority to any investment made in cash by
11 the member in the member's cooperative and confirm that all
12 other classes of equity shall be treated equally.

13 Section 7 specifies that a voting member may receive fair
14 value for the member's interest if the member votes in oppo-
15 sition to the merger or consolidation and makes written
16 demand. A dissenting member who resumes business with the new
17 association foregoes the right to dissent.

18 Section 8 reduces the short term financial advantage given
19 to a cooperative member who dissents in a merger or con-
20 solidation.

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HOUSE FILE 2448

H-5487

1 Amend House File 2448 as follows:

2 1. Page 4, by inserting after line 33 the
3 following:

4 "Sec. . NEW SECTION. 499.59 BOOKS AND RECORDS.
5 Each association shall keep correct and complete
6 books and records of account and shall keep minutes of
7 the proceedings of its members and board of directors.
8 Each association also shall keep at its registered
9 office or principal place of business, or at the
10 office of its transfer agent or registrar, a record of
11 its members, giving the names and addresses of all
12 members and the accounts receivable due to and amount
13 of grain stored for each member. The office of any
14 transfer agent or registrar may be maintained within
15 or without the state of Iowa. Any books, records and
16 minutes may be in written form or in any other form
17 capable of being converted into written form within a
18 reasonable time.

5566 19 Upon written demand stating the purpose for the
20 examination, a person who has been a member at least
21 six months immediately preceding the person's demand
22 shall have the right to examine, in person or by agent
23 or attorney, at any reasonable time, for any proper
24 purpose its relevant books and records of account,
25 minutes, and record of members, and to make extracts
26 from the books and records. The records of the total
27 accounts receivable and total grain stored shall be
28 available for examination under this section.
29 However, this section does not require the disclosure
30 of records of accounts receivable or of grain stored
31 for individual members other than the requesting
32 member.

5543 33 An officer or agent who, or an association which,
34 arbitrarily or in bad faith refuses to allow an
35 eligible member, or the member's agent or attorney, to
36 examine and make extracts from its books and records
37 of account, minutes, and record of members, for any
38 proper purpose, is liable to the member in a penalty
39 of ten percent of the value of the accounts receivable
40 due to and grain stored for the member, but not to
41 exceed five hundred dollars, in addition to any other
42 damages or remedy afforded the member by law, but the
43 court may decrease the amount of the penalty on a
44 finding of mitigating circumstances. It shall be a
45 defense to an action for penalties under this section
46 that the person suing for the penalty has within two
47 years sold or offered for sale any list of members of
48 the association or any other association, or has aided
49 or abetted any person in procuring any list of members
50 for the purpose of sale, or has improperly used

H-5487

Page Two

1 information secured through a prior examination of the
2 books and records of account, or minutes, or record of
3 members of the association or any other association,
4 or was not acting in good faith or for a proper
5 purpose in making the demand.

6 This section does not impair the power of a court
7 of competent jurisdiction, upon proof by a member of
8 proper purpose, irrespective of the period of time
9 during which the member has been a member, to compel
10 the production for examination by the member of the
11 books and records of account, minutes and record of
12 members of an association.

13 Upon the written request of a member, the
14 association shall mail to the member its most recent
15 financial statements showing in reasonable detail its
16 assets and liabilities and the results of its
17 operations."

H-5487 FILED MARCH 20, 1986 BY BLANSHAN of Greene

*Not timely filed (p. 938)
o/o (p. 1059)*

HOUSE FILE 2448

H-5482

1 Amend House File 2448 as follows:

2 1. Page 6, line 10, by striking the word "and"
3 and inserting the word "or".

H-5482 FILED MARCH 20, 1986 BY FOGARTY of Palo Alto

ADOPTED (p. 938)

HOUSE FILE 2448

H-5506

5487

1 Amend amendment H-~~5487~~ to House File 2448 as follows:

2 1. Page 1, line 20, by striking the words "a
3 person who has been a member" and inserting the
4 following: "a group of persons to consist of at
5 least five percent of voting members who have been
6 members".

7 2. Page 1, line 21, by striking the word "person's"
8 and inserting the word "group's".

9 3. Page 1, by striking line 32, and inserting the
10 following: "members. The records disclosed shall be
11 limited to the most recent membership list, minutes,
12 the most recent statement of operations, the most
13 recent balance sheet, and the latest daily grain
14 position record."

H-5506 FILED MARCH 21, 1986 BY KREMER of Buchanan

Placed o/o 3/27 (p. 1059)

HOUSE FILE 2448

H-5507

1 Amend House File 2448 as follows:
2 1. Page 7, by inserting after line 22 the
3 following:
4 "Sec. ____ . Section 503.2, unnumbered paragraph 1,
5 Code 1985, is amended to read as follows:
6 The term "association" ~~when as~~ used in this chapter
7 means ~~any a~~ person other than building and loan
8 associations, state and national banks, insurance
9 companies and associations, and corporations and co-
10 operative associations subject to the provisions of
11 chapters 497, ~~and~~ 498, ~~and~~ 499, which ~~sett~~ sells or
12 offer offers for sale to the public generally
13 memberships or certificates of membership entitling
14 the holder to purchase merchandise, materials,
15 equipment or services on a discount or cost-plus
16 basis."

H-5507 FILED MARCH 21, 1986

BY OSTERBERG of Linn

Placed o/b 3/27 (p. 1059)

HOUSE FILE 2448

H-5542

1 Amend House File 2448 as follows:
2 1. Page 1, by inserting before line 1 the
3 following:
4 "Section 1. Section 422.9, Code 1985, is amended
5 by adding the following new subsection:
6 NEW SUBSECTION. 6. The amount of local deferred
7 patronage dividends and deferred patronage dividends
8 declared under chapter 499 upon which the taxpayer
9 paid Iowa income tax when allocated and which have not
10 been paid by a date five years after the allocation of
11 the dividends. This deduction shall be available only
12 once for each unpaid dividend, and is not available if
13 the unpaid dividend has been otherwise discharged and
14 the Iowa income tax recouped. If the taxpayer
15 receives payment on a dividend after deducting the
16 amount of the dividend under this subsection, the
17 taxpayer shall include the payment in the taxpayer's
18 taxable income for the year the payment is received."

H-5542 FILED MARCH 25, 1986

BY MAULSBY of Calhoun

Placed o/b 3/27 (p. 1059)

HOUSE FILE 2448

H-5543

1 Amend amendment H-5487 to House File 2448 as
2 follows:
3 1. Page 1, by striking lines 35 through 40 and
4 inserting the following: "eligible group of members,
5 or the group's agent or attorney, to examine and make
6 extracts from its membership list, minutes, the most
7 recent statement of operations, the most recent
8 balance sheet, and the latest daily grain position
9 record is liable to the group for damages but not to".

H-5543 FILED MARCH 25, 1986

BY KREMER of Buchanan

Placed o/b 3/27 (p. 1059)

HOUSE FILE 2448

H-5534

1 Amend House File 2448 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Sec. ____ . Section 450.4, Code 1985, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 6. On the value of that portion
7 of the value of local deferred patronage dividends and
8 deferred patronage dividends remaining unpaid under
9 chapter 499 for which a person liable for the tax on
10 the dividends elects to treat as income upon payment
11 of the dividends. The election under this subsection
12 shall be made by the taxpayer in the manner prescribed
13 by rule by the director of revenue."

H-5534 FILED MARCH 25, 1986

BY KOENIGS of Mitchell

Placed o/o 4/24 (p.1058)

HSB 777

Agriculture

now
HF 2448

HOUSE FILE 2448
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to cooperative associations.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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6 499.30 which the board of directors of the association has
7 determined arise from earnings of the association other than
8 earnings which have been allocated to the association by other
9 cooperative organizations of which the association is a
10 member. However, if the board of directors fails to make a
11 determination with respect to a deceased member's deferred
12 patronage dividends prior to the member's death, then "local
13 deferred patronage dividends" means that portion of the
14 member's deferred patronage dividends which is proportional to
15 the deferred patronage dividends described in section 499.30
16 less the amount of undistributed net earnings which have been
17 allocated to the association by other cooperative
18 organizations of which the association is a member, compared
19 to all deferred patronage dividends of the association.

20 NEW UNNUMBERED PARAGRAPH. "Local deferred patronage
21 preferred stock" of an association means preferred stock, if
22 any, of an association which has been issued in exchange for
23 local deferred patronage dividends. If preferred stock has
24 been issued in exchange for deferred patronage dividends prior
25 to the time the board of directors of the association has
26 determined the portion of each member's deferred patronage
27 dividend which represents local deferred patronage dividends,
28 then the board of directors may reasonably determine what
29 portion of the preferred stock was issued in exchange for
30 local deferred patronage dividends and the portion which was
31 issued for other deferred patronage dividends.

32 Sec. 2. Section 499.30, unnumbered paragraph 3, Code 1985,
33 is amended to read as follows:

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35 added to surplus until surplus equals either thirty percent of

1 the total of all capital paid in for stock or memberships,
2 plus all unpaid patronage dividends, plus certificates of
3 indebtedness payable upon liquidation, earnings from nonmember
4 business, and earnings from regional cooperative associations,
5 or one thousand dollars, whichever is greater. No additions
6 shall be made to surplus ~~whenever~~ when it exceeds either fifty
7 percent of ~~such~~ the total, or one thousand dollars, whichever
8 is greater.

9 Sec. 3. Section 499.30, unnumbered paragraph 6, Code 1985,
10 is amended to read as follows:

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12 association ~~now-in-effect~~, for each taxable year of the
13 association beginning after December 31, 1962, all remaining
14 net earnings shall be allocated to the account of each member,
15 including subscribers described in section 499.16, ratably in
16 proportion to the business the member ~~had-done~~ did with the
17 association during ~~such~~ that year. The directors shall
18 determine, or the articles of incorporation or bylaws of the
19 association may specify, the percentage or the amount of ~~said~~
20 the allocation that currently shall be paid in cash ~~7-provided~~
21 ~~that-so-long-as~~. However, if there are unpaid local deferred
22 patronage dividends of deceased members for prior years, the
23 amount currently payable in cash shall not exceed twenty
24 percent of ~~said~~ the allocation. All ~~said~~ the remaining
25 allocation not ~~so~~ paid in cash shall be transferred to a
26 revolving fund and credited to ~~said~~ the members and
27 subscribers. Such The credits in the revolving fund are
28 ~~herein~~ referred to in this chapter as deferred patronage
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33 The directors may use the revolving fund to pay the
34 obligations or add to the capital of the association or retire
35 its preferred stock. In ~~such~~ that event the deferred

1 patronage dividends credited to members shall constitute a
2 charge on the revolving fund, and on future additions thereto
3 to the revolving fund, and on the corporate assets,
4 subordinate to existing or future creditors and preferred
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6 dividends for any year shall have priority over those for any
7 subsequent year years. However, prior to any other payments
8 of deferred patronage dividends or redemption of preferred
9 stock held by members, the directors of co-operative
10 associations, other than those co-operative associations which
11 are public utilities as defined in section 476.1 and ~~other~~
12 ~~than-those-co-operative-associations-which-are-public~~
13 ~~utilities-which-are-exempt-from-rate-regulation-as-provided-in~~
14 ~~that-section~~, shall pay local deferred patronage dividends and
15 redeem local deferred patronage preferred stock, of deceased
16 natural persons who were members, and may pay deferred
17 patronage dividends or may redeem preferred stock of deceased
18 natural persons who were members or of members who become
19 ineligible, without reference to the order of priority.
20 Directors of co-operative associations which are public
21 utilities as defined in section 476.1 and ~~directors-of-co-~~
22 ~~operative-associations-which-are-public-utilities-exempt-from~~
23 ~~rate-regulation-as-provided-in-that-section~~, may pay deferred
24 patronage dividends and redeem preferred stock, of deceased
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29 stock of ineligible members shall be carried out to the extent
30 and in the manner specified in the bylaws of the association.

31 Sec. 5. Section 499.36, subsection 4, Code 1985, is
32 amended to read as follows:

33 4. Directors shall be elected by districts, if the
34 articles specify the districts, the number of directors from
35 each district, the manner of nomination, redistricting, or

1 reapportionment, and whether directors ~~shall~~ are to be
2 directly elected by the members or by delegates chosen by
3 them. Districts shall be ~~so~~ formed and redistricting shall be
4 ordered, from time to time, so that the districts contain as
5 nearly as possible an equal number of members. The bylaws
6 shall describe the district boundaries currently in effect.

7 Sec. 6. Section 499.48, Code 1985, is amended by striking
8 the section and inserting in lieu thereof the following:

9 499.48 DISTRIBUTION IN LIQUIDATION.

10 On dissolution or liquidation, the assets of the
11 association shall be used to pay liquidation expenses first,
12 next the association's obligations other than patronage
13 dividends or patronage dividend certificates which it has
14 issued, and the remainder shall be distributed in the
15 following priority:

16 1. To pay to each person the full amount originally paid
17 by that person in cash for stock or other equity interest in
18 the association.

19 2. To pay to each person in proportion to the total of
20 each person's revolving fund, stock, or other equity interest
21 in the association remaining after the payment under
22 subsection 1.

23 In applying subsections 1 and 2, all classes of stock, all
24 revolving funds, and all other equity interests in the
25 association shall be treated equally based on their stated
26 values. However, an association may establish its own method
27 of distributing the assets remaining, after paying liquidation
28 expenses and obligations other than patronage dividends or
29 patronage dividend certificates which it has issued, in
30 articles of incorporation adopted, amended, or restated after
31 the effective date of this Act.

32 Sec. 7. Section 499.66, Code 1985, is amended by striking
33 the section and inserting in lieu thereof the following:

34 499.66 VALUE DETERMINED.

35 1. As used in this section:

1 a. "Dissenting member" means a member or former member who
2 makes a demand for payment of the fair value under section
3 499.65.

4 b. "Old association" means the association in which the
5 member owns or owned a membership.

6 c. "New association" means the surviving or new asso-
7 ciation after the merger or consolidation.

8 d. "Issue price" means the amount paid for an interest in
9 the old association or the amount stated in a notice of
10 allocation of patronage dividends.

11 e. "Fair market value" means the cash price that would be
12 paid by a willing buyer to a willing seller, neither being
13 under any compulsion to buy or sell.

14 2. Within twenty days after the merger or consolidation is
15 effected, the new association shall make a written offer to
16 each dissenting member to pay a specified sum deemed by the
17 new association to be the fair value of that dissenting
18 member's interest in the old association. This offer shall be
19 accompanied by a balance sheet of the old association as of
20 the latest available date, a profit and loss statement of the
21 old association for the twelve-month period ending on the date
22 of this balance sheet, and a list of the dissenting member's
23 interests in the old association. If the dissenting member
24 does not agree that the sum stated in this notice represents
25 the fair value of the member's interest, then the member may
26 file a written objection with the new association within
27 twenty days after receiving this notice. A dissenting member
28 who fails to file this objection within the twenty-day period
29 is conclusively presumed to have consented to the fair value
30 stated in the notice.

31 If the surviving or new association receives any objections
32 to fair values, then within ninety days after the merger or
33 consolidation is effected, the new association shall file a
34 petition in the Iowa district court asking for a finding and
35 determination of the fair value of each type of equity. The

1 action shall be prosecuted as an equitable action.

2 The fair value shall be determined as of the day preceding
3 the merger or consolidation by subtracting the old asso-
4 ciation's debts from the fair market value of the old
5 association's assets, and dividing the remainder by the total
6 issue price of all memberships, common stock, preferred stock,
7 and revolving funds. The quotient from this division shall be
8 multiplied by the total issue price of a dissenting member's
9 membership, common stock, preferred stock, and revolving fund
10 interest to determine the fair value of that dissenting
11 member's interest in the old association.

12 3. The new association shall pay to each dissenting member
13 in cash within sixty days after the merger or consolidation
14 the amount paid in cash by the dissenting member for that
15 member's interest in the old association. The new association
16 shall pay the remainder of each dissenting member's fair value
17 at the same time other payments of deferred patronage
18 dividends or redemption of preferred stock are made, but in
19 any event within fifteen years after the merger or
20 consolidation. A dissenting member who is a natural person
21 who dies before receiving the fair value shall have all of the
22 person's fair value paid with the same priority as if the
23 person was a member at the time of death.

24

EXPLANATION

25 Section 1 provides additional definitions to allow a
26 distinction between patronage arising from operations of the
27 local cooperative and patronage arising from operations of
28 other cooperative organizations of which the local cooperative
29 may be a member.

30 Section 2 allows the cooperative to include earnings from
31 nonmember business and earnings from regional cooperatives as
32 it determines its proper minimum and maximum levels of
33 surplus.

34 Sections 3 and 4 address the payment of equity in the
35 cooperative to estates of deceased members as it concerns the

1 portion coming from regional cooperatives. The change would
2 relieve the cooperative from paying cash out of local funds to
3 cover payments to estates for that portion of their equity
4 promised by the regional for payment at some future date.

5 Section 5 makes it unnecessary for the cooperative to amend
6 its articles of incorporation each time it seeks to reap-
7 portion its members into districts of more equal size. The
8 change would allow a bylaw modification to be sufficient.

9 Section 6 rewrites the method of determining priorities in
10 distribution of a cooperative's assets during liquidation. It
11 would give higher priority to any investment made in cash by
12 the member in the member's cooperative and confirm that all
13 other classes of equity shall be treated equally.

14 Section 7 reduces the short term financial advantage given
15 to a cooperative member who dissents in a merger or con-
16 solidation.

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HOUSE FILE 2448

AN ACT
RELATING TO COOPERATIVE ASSOCIATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 499.2, Code 1985, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. "Local deferred patronage dividends" of an association means that portion of each member's deferred patronage dividends described in section 499.30 which the board of directors of the association has determined arise from earnings of the association other than earnings which have been allocated to the association but which have not been paid in cash to the association by other cooperative organizations of which the association is a member. However, if the board of directors fails to make a determination with respect to a deceased member's deferred patronage dividends prior to the member's death, then "local deferred patronage dividends" means that portion of the member's deferred patronage dividends which is proportional to the deferred patronage dividends described in section 499.30 less the amount of undistributed net earnings which have been allocated to the association by other cooperative organizations of which the association is a member, compared to all deferred patronage dividends of the association.

NEW UNNUMBERED PARAGRAPH. "Local deferred patronage preferred stock" of an association means preferred stock, if any, of an association which has been issued in exchange for local deferred patronage dividends. If preferred stock has been issued in exchange for deferred patronage dividends prior to the time the board of directors of the association has determined the portion of each member's deferred patronage dividend which represents local deferred patronage dividends, then the board of directors may reasonably determine what portion of the preferred stock was issued in exchange for local deferred patronage dividends and the portion which was issued for other deferred patronage dividends.

Sec. 2. Section 499.30, unnumbered paragraph 3, Code 1985, is amended to read as follows:

At least ten percent of the remaining earnings must be added to surplus until surplus equals either thirty percent of the total of all capital paid in for stock or memberships, plus all unpaid patronage dividends, plus certificates of indebtedness payable upon liquidation, earnings from nonmember business, and earnings arising from the earnings of other cooperative organizations of which the association is a member, or one thousand dollars, whichever is greater. No additions shall be made to surplus ~~whenever~~ when it exceeds either fifty percent of such the total, or one thousand dollars, whichever is greater.

Sec. 3. Section 499.30, unnumbered paragraph 6, Code 1985, is amended to read as follows:

Notwithstanding the articles of incorporation of any association ~~now-in-effect~~, for each taxable year of the association beginning after December 31, 1962, all remaining net earnings shall be allocated to the account of each member, including subscribers described in section 499.16, ratably in proportion to the business the member ~~had-done~~ did with the association during such that year. The directors shall determine, or the articles of incorporation or bylaws of the

association may specify, the percentage or the amount of said the allocation that currently shall be paid in cash, ~~provided that so long as~~. However, so long as there are unpaid local deferred patronage dividends of deceased members for prior years, the amount currently payable in cash shall not exceed twenty percent of said the allocation. All said the remaining allocation not ~~so~~ paid in cash shall be transferred to a revolving fund and credited to said the members and subscribers. Such The credits in the revolving fund are herein referred to in this chapter as deferred patronage dividends.

Sec. 4. Section 499.33, Code 1985, is amended to read as follows:

499.33 USE OF REVOLVING FUND.

The directors may use the revolving fund to pay the obligations or add to the capital of the association or retire its preferred stock. In such that event the deferred patronage dividends credited to members shall constitute a charge on the revolving fund, and on future additions thereto to the revolving fund, and on the corporate assets, subordinate to existing or future creditors and preferred stockholders ~~then or thereafter existing~~. Deferred patronage dividends for any year shall have priority over those for any subsequent year years. However, prior to any other payments of deferred patronage dividends or redemption of preferred stock held by members, the directors of co-operative associations, other than those co-operative associations which are public utilities as defined in section 476.1 ~~and other than those co-operative associations which are public utilities which are exempt from rate regulation as provided in that section~~, shall pay local deferred patronage dividends and redeem local deferred patronage preferred stock, of deceased natural persons who were members, and may pay deferred patronage dividends or may redeem preferred stock of deceased natural persons who were members or of members who become

ineligible, without reference to the order of priority. Directors of co-operative associations which are public utilities as defined in section 476.1 ~~and directors of co-operative associations which are public utilities exempt from rate regulation as provided in that section~~, may pay deferred patronage dividends and redeem preferred stock, of deceased natural persons who were members, and may pay deferred patronage dividends or redeem preferred stock of members who become ineligible without reference to priority. Payment of deferred patronage dividends or the redemption of preferred stock of ineligible members shall be carried out to the extent and in the manner specified in the bylaws of the association.

Sec. 5. Section 499.36, subsection 4, Code 1985, is amended to read as follows:

4. Directors shall be elected by districts, if the articles specify the districts, the number of directors from each district, the manner of nomination, redistricting, or reapportionment, and whether directors shall are to be directly elected by the members or by delegates chosen by them. Districts shall be ~~so~~ formed and redistricting shall be ordered, from time to time, so that the districts contain as nearly as possible an equal number of members. The bylaws shall describe the district boundaries currently in effect.

Sec. 6. Section 499.48, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

499.48 DISTRIBUTION IN LIQUIDATION.

On dissolution or liquidation, the assets of the association shall be used to pay liquidation expenses first, next the association's obligations other than patronage dividends or patronage dividend certificates which it has issued, and the remainder shall be distributed in the following priority:

1. To pay to each person the full amount originally paid by that person in cash for stock or other equity interest in the association.

2. To pay to each person in proportion to the total of each person's revolving fund, stock, or other equity interest in the association remaining after the payment under subsection 1.

In applying subsections 1 and 2, all classes of stock, all revolving funds, and all other equity interests in the association shall be treated equally based on their stated values. However, an association may establish its own method of distributing the assets remaining, after paying liquidation expenses and obligations other than patronage dividends or patronage dividend certificates which it has issued, in articles of incorporation adopted, amended, or restated after the effective date of this Act.

Sec. 7. Section 499.65, Code 1985, is amended to read as follows:

499.65 OBJECTION OF MEMBERS -- PURCHASE OF SHARE.

If a voting member or voting shareholder of a co-operative association which is a party to a merger or consolidation files with the co-operative association, prior to or at the meeting of members at which the plan is submitted to a vote, a written objection to the plan of merger or consolidation, and ~~does not vote in favor of~~ votes in opposition to the plan, and such the member or shareholder, within twenty days after the merger or consolidation is approved by the other members, makes written demand on the surviving or new association for payment of the fair value of that member's or shareholder's interest as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new association shall pay to ~~such the~~ the member or shareholder, upon surrender of that person's certificate of membership or shares of stock, the fair value of that person's interest. Any A member or shareholder ~~failing who fails~~ is to make demand within the twenty-day period ~~shall be~~ is conclusively presumed to have consented to the merger or consolidation and ~~shall be~~ is bound by its terms.

In the event ~~any that a~~ any dissenting member or shareholder ~~shall apply for membership in~~ does business with the surviving or new association, before payment has been made for that person's membership or stock, the dissenting member or shareholder ~~shall be~~ is deemed to have consented to the merger or consolidation and to have waived all further rights as a dissenting member or shareholder.

Sec. 8. Section 499.66, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

499.66 VALUE DETERMINED.

1. As used in this section:

a. "Dissenting member" means a voting member who votes in opposition to the plan of merger or consolidation and who makes a demand for payment of the fair value under section 499.65.

b. "Old association" means the association in which the member owns or owned a membership.

c. "New association" means the surviving or new association after the merger or consolidation.

d. "Issue price" means the amount paid for an interest in the old association or the amount stated in a notice of allocation of patronage dividends.

e. "Fair market value" means the lesser of the cash price that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, or the issue price of the dissenting member's membership or common stock, deferred patronage dividends, and preferred stock.

2. Within twenty days after the merger or consolidation is effected, the new association shall make a written offer to each dissenting member to pay a specified sum deemed by the new association to be the fair value of that dissenting member's interest in the old association. This offer shall be accompanied by a balance sheet of the old association as of the latest available date, a profit and loss statement of the old association for the twelve-month period ending on the date

of this balance sheet, and a list of the dissenting member's interests in the old association. If the dissenting member does not agree that the sum stated in this notice represents the fair value of the member's interest, then the member may file a written objection with the new association within twenty days after receiving this notice. A dissenting member who fails to file this objection within the twenty-day period is conclusively presumed to have consented to the fair value stated in the notice.

If the surviving or new association receives any objections to fair values, then within ninety days after the merger or consolidation is effected, the new association shall file a petition in the Iowa district court asking for a finding and determination of the fair value of each type of equity. The action shall be prosecuted as an equitable action.

The fair value shall be determined as of the day preceding the merger or consolidation by subtracting the old association's debts from the fair market value of the old association's assets, and dividing the remainder by the total issue price of all memberships, common stock, preferred stock, and revolving funds. The quotient from this division shall be multiplied by the total issue price of a dissenting member's membership, common stock, preferred stock, and revolving fund interest to determine the fair value of that dissenting member's interest in the old association.

3. The new association shall pay to each dissenting member in cash within sixty days after the merger or consolidation the amount paid in cash by the dissenting member for that member's interest in the old association. The new association shall pay the remainder of each dissenting member's fair value at the same time other payments of deferred patronage dividends or redemption of preferred stock are made, but in any event within fifteen years after the merger or consolidation. A dissenting member who is a natural person who dies before receiving the fair value shall have all of the

person's fair value paid with the same priority as if the person was a member at the time of death.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2448, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 20, 1986

TERRY E. BRANSTAD
Governor