

Amend (3176) and L. Pass 3/12/87 (p. 609)

FEB 26 1987

Agriculture

HOUSE FILE 356

BY FOGARTY, GRUHN, DE GROOT,
BRANSTAD, SKOW, and MAULSBY

Passed House, Date 3/12/87 Passed Senate, Date _____
Vote: Ayes 47 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the transfer of all, or substantially all, the
2 property or assets of a cooperative association by sale, other
3 disposition, or by merger.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 356

H-3176

1 Amend House File 356 as follows:
2 1. Page 1, lines 4 and 5, by striking the words
3 "all, or substantially all,".
4 2. Page 1, line 12, by inserting after the word
5 "other" the following: "corporation or".

H-3176 FILED MARCH 12, 1987 BY COMMITTEE ON AGRICULTURE

Amend House File 356 as follows
3/12/87

HOUSE FILE 356

H-3187

1 Amend amendment, H-3176, to House File 356 as
2 follows:
3 1. Page 1, by inserting after line 5 the
4 following:
5 "_____. Title page, line 1, by striking the words
6 "all, or substantially all,"."

H-3187 FILED MARCH 13, 1987 BY KREMER of Buchanan

Amend H-3176
3/13/87

1 Section 1. NEW SECTION. 499.47A SALE OR OTHER
2 DISPOSITION OF ASSETS IN REGULAR COURSE OF BUSINESS AND
3 MORTGAGE OR PLEDGE OF ASSETS.

4 The sale, lease, exchange, or other disposition of all, or
5 substantially all, the property and assets of a cooperative
6 association, when made in the usual and regular course of the
7 business of the cooperative association, and the mortgage or
8 pledge of any or all of the property and assets of the
9 cooperative association, may be made upon such terms and
10 conditions and for such consideration, which may consist in
11 whole or in part of money or property, real or personal,
12 including shares of any other cooperative association,
13 domestic or foreign, as authorized by its board of directors;
14 and in such case no authorization or consent of the members
15 shall be required.

16 Sec. 2. NEW SECTION. 499.47B SALE OR OTHER DISPOSITION
17 OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS.

18 A sale, lease, exchange, or other disposition of all, or
19 substantially all, the property and assets, with or without
20 the good will, of a cooperative association organized under
21 this chapter, if not made in the usual and regular course of
22 its business, may be made upon the terms and conditions and
23 for such consideration, which may consist in whole or in part
24 of money or property, real or personal, including shares of
25 any other cooperative association organized under this
26 chapter, as may be authorized in the following manner:

27 1. The board of directors shall adopt a resolution recom-
28 mending the sale, lease, exchange, or other disposition and
29 directing the submission thereof to a vote at a meeting of the
30 membership, which may either be an annual or a special
31 meeting.

32 2. Written or printed notice shall be given to each member
33 of record entitled to vote at the meeting within the time and
34 in the manner provided in this chapter for the giving of
35 notice of meetings of members, and, whether the meeting be an

1 annual or a special meeting, shall state that the purpose, or
2 one of the purposes, of the meeting is to consider the
3 proposed sale, lease, exchange, or other disposition of
4 substantially all of the property and assets of the
5 cooperative association.

6 3. At the meeting the membership may authorize the sale,
7 lease, exchange, or other disposition and may fix, or may
8 authorize the board of directors to fix, any or all of the
9 terms and conditions thereof and the consideration to be re-
10 ceived by the cooperative association. Such authorization
11 shall be approved if two-thirds of the members vote affirma-
12 tively on a ballot in which a majority of all voting members
13 participate.

14 4. After such authorization by a vote of members, the
15 board of directors nevertheless, in its discretion, may aban-
16 don the sale, lease, exchange, or other disposition of assets,
17 subject to the rights of third parties under any contracts re-
18 lating thereto, without further action or approval by the
19 members.

20 Sec. 3. NEW SECTION. 499.47C SALE OR OTHER DISPOSITION
21 OF ASSETS IN EXCHANGE FOR COMMON STOCK.

22 In addition to the requirements of section 499.47B, in any
23 case where a cooperative association issues its common stock
24 or membership, or subscriptions for common stock or member-
25 ship, or both, as a part or all of the consideration for the
26 sale, lease, exchange, or other disposition of all, or
27 substantially all, the property and assets of another
28 cooperative association, the issuance of such common stock or
29 membership, or subscriptions for common stock or membership,
30 or both, shall be authorized by the issuing cooperative
31 association in the following manner:

32 1. The board of directors shall adopt a resolution recom-
33 mending the issuance of the common stock or membership, or
34 subscriptions for common stock or membership, or both, and
35 directing the submission thereof to a vote at a meeting of the

1 membership, which may be either an annual or special meeting.

2 2. Written or printed notice shall be given to each member
3 of record entitled to vote at the meeting within the time and
4 in the manner provided in this chapter for the giving of
5 notice of meetings to members, and, whether the meeting be an
6 annual or a special meeting, shall state that the purpose, or
7 one of the purposes of the meeting, is to consider the
8 proposed issuance of common stock or membership, or
9 subscriptions for common stock or membership, or both, as
10 consideration for all or a part of the property and assets of
11 the other cooperative association.

12 3. At the meeting the membership may authorize the issu-
13 ance and may fix, or may authorize the board of directors to
14 fix, any or all of the terms and conditions thereof and the
15 property and assets to be received as consideration. Such
16 authorization shall be approved if a majority of the voting
17 members present vote in the affirmative.

18 4. After such authorization by a vote of members, the
19 board of directors nevertheless, in its discretion, may aban-
20 don the issuance, without further action or approval by the
21 members.

22 If a cooperative association, in connection with its acqui-
23 sition of property or assets of another cooperative
24 association, agrees to solicit common stock or membership, or
25 subscriptions for common stock or membership to the members of
26 the cooperative association selling such property or assets,
27 the agreement shall not itself constitute the issuance of
28 common stock or membership, or subscriptions for common stock
29 or membership as described in this section. This section
30 shall not apply to a merger as defined in section 499.61.

31 Sec. 4. Section 499.61, subsection 1, Code 1987, is
32 amended to read as follows:

33 1. "Merger" means the uniting of two or more co-operative
34 associations into one co-operative association, in such manner
35 that one of the merging associations retains its corporate

1 existence and absorbs the others, which cease to exist as
2 corporate entities. "Merger" does not include the mere
3 acquisition, by purchase or otherwise, of the assets of one
4 co-operative association by another, unless the acquisition
5 only becomes effective by the filing of articles of merger by
6 the associations and the issuance of a certificate of merger
7 pursuant to sections 499.67 and 499.68.

8 EXPLANATION

9 This bill provides that a cooperative association may sell,
10 lease, exchange, or otherwise dispose of all or substantially
11 all its property or assets similarly to an investor-owned
12 corporation. The disposition, if not in the usual and or-
13 dinary course of business, must be approved by a majority of
14 the members eligible to vote in an officially noticed annual
15 or special meeting of the cooperative association. Property
16 sold or encumbered in the regular and usual course of business
17 is not subject to membership approval.

18 The bill also provides that a cooperative association that
19 issues common stock or membership, or subscriptions for its
20 common stock or membership, or both, as consideration for the
21 acquisition of substantially all the property and assets of
22 another cooperative association, must have the issuance ap-
23 proved by at least a majority of its members present to vote.

24 It finally provides that under certain conditions the term
25 "merger" includes the sale of assets by one cooperative asso-
26 ciation to another.

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HOUSE FILE 356

BY FOGARTY, GRUHN, DE GROOT,
BRANSTAD, SKOW, and MAULSBY

Sub. for S.F. 366 4/10/87

(As Amended and Passed by the House March 17, 1987)

Passed House, Date 3/17/87 (p. 658) Passed Senate, Date 4-13-87 (p. 1266)

Vote: Ayes 95 Nays 0 Vote: Ayes 49 Nays 0

Approved May 1, 1987 (p. 1862)

A BILL FOR

*1 An Act relating to the transfer of the property or assets of a
2 cooperative association by sale, other disposition, or by
3 merger.

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

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House Amendments _____

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Deleted Language *

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1 Section 1. NEW SECTION. 499.47A SALE OR OTHER
2 DISPOSITION OF ASSETS IN REGULAR COURSE OF BUSINESS AND
3 MORTGAGE OR PLEDGE OF ASSETS.

*4 The sale, lease, exchange, or other disposition of the
5 property and assets of a cooperative association, when made in
6 the usual and regular course of the business of the
7 cooperative association, and the mortgage or pledge of any or
8 all of the property and assets of the cooperative association,
9 may be made upon such terms and conditions and for such
10 consideration, which may consist in whole or in part of money
11 or property, real or personal, including shares of any other
12 corporation or cooperative association, domestic or foreign,
13 as authorized by its board of directors; and in such case no
14 authorization or consent of the members shall be required.

15 Sec. 2. NEW SECTION. 499.47B SALE OR OTHER DISPOSITION
16 OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS.

17 A sale, lease, exchange, or other disposition of all, or
18 substantially all, the property and assets, with or without
19 the good will, of a cooperative association organized under
20 this chapter, if not made in the usual and regular course of
21 its business, may be made upon the terms and conditions and
22 for such consideration, which may consist in whole or in part
23 of money or property, real or personal, including shares of
24 any other cooperative association organized under this
25 chapter, as may be authorized in the following manner:

26 1. The board of directors shall adopt a resolution recom-
27 mending the sale, lease, exchange, or other disposition and
28 directing the submission thereof to a vote at a meeting of the
29 membership, which may either be an annual or a special
30 meeting.

31 2. Written or printed notice shall be given to each member
32 of record entitled to vote at the meeting within the time and
33 in the manner provided in this chapter for the giving of
34 notice of meetings of members, and, whether the meeting be an
35 annual or a special meeting, shall state that the purpose, or

1 one of the purposes, of the meeting is to consider the
2 proposed sale, lease, exchange, or other disposition of
3 substantially all of the property and assets of the
4 cooperative association.

5 3. At the meeting the membership may authorize the sale,
6 lease, exchange, or other disposition and may fix, or may
7 authorize the board of directors to fix, any or all of the
8 terms and conditions thereof and the consideration to be re-
9 ceived by the cooperative association. Such authorization
10 shall be approved if two-thirds of the members vote affirma-
11 tively on a ballot in which a majority of all voting members
12 participate.

13 4. After such authorization by a vote of members, the
14 board of directors nevertheless, in its discretion, may aban-
15 don the sale, lease, exchange, or other disposition of assets,
16 subject to the rights of third parties under any contracts re-
17 lating thereto, without further action or approval by the
18 members.

19 Sec. 3. NEW SECTION. 499.47C SALE OR OTHER DISPOSITION
20 OF ASSETS IN EXCHANGE FOR COMMON STOCK.

21 In addition to the requirements of section 499.47B, in any
22 case where a cooperative association issues its common stock
23 or membership, or subscriptions for common stock or member-
24 ship, or both, as a part or all of the consideration for the
25 sale, lease, exchange, or other disposition of all, or
26 substantially all, the property and assets of another
27 cooperative association, the issuance of such common stock or
28 membership, or subscriptions for common stock or membership,
29 or both, shall be authorized by the issuing cooperative
30 association in the following manner:

31 1. The board of directors shall adopt a resolution recom-
32 mending the issuance of the common stock or membership, or
33 subscriptions for common stock or membership, or both, and
34 directing the submission thereof to a vote at a meeting of the
35 membership, which may be either an annual or special meeting.

1 2. Written or printed notice shall be given to each member
2 of record entitled to vote at the meeting within the time and
3 in the manner provided in this chapter for the giving of
4 notice of meetings to members, and, whether the meeting be an
5 annual or a special meeting, shall state that the purpose, or
6 one of the purposes of the meeting, is to consider the
7 proposed issuance of common stock or membership, or
8 subscriptions for common stock or membership, or both, as
9 consideration for all or a part of the property and assets of
10 the other cooperative association.

11 3. At the meeting the membership may authorize the issu-
12 ance and may fix, or may authorize the board of directors to
13 fix, any or all of the terms and conditions thereof and the
14 property and assets to be received as consideration. Such
15 authorization shall be approved if a majority of the voting
16 members present vote in the affirmative.

17 4. After such authorization by a vote of members, the
18 board of directors nevertheless, in its discretion, may aban-
19 don the issuance, without further action or approval by the
20 members.

21 If a cooperative association, in connection with its acqui-
22 sition of property or assets of another cooperative
23 association, agrees to solicit common stock or membership, or
24 subscriptions for common stock or membership to the members of
25 the cooperative association selling such property or assets,
26 the agreement shall not itself constitute the issuance of
27 common stock or membership, or subscriptions for common stock
28 or membership as described in this section. This section
29 shall not apply to a merger as defined in section 499.61.

30 Sec. 4. Section 499.61, subsection 1, Code 1987, is
31 amended to read as follows:

32 1. "Merger" means the uniting of two or more co-operative
33 associations into one co-operative association, in such manner
34 that one of the merging associations retains its corporate
35 existence and absorbs the others, which cease to exist as

1 corporate entities. "Merger" does not include the mere
2 acquisition, by purchase or otherwise, of the assets of one
3 co-operative association by another, unless the acquisition
4 only becomes effective by the filing of articles of merger by
5 the associations and the issuance of a certificate of merger
6 pursuant to sections 499.67 and 499.68.

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HOUSE FILE 356

AN ACT

RELATING TO THE TRANSFER OF THE PROPERTY OR ASSETS OF A CO-OPERATIVE ASSOCIATION BY SALE, OTHER DISPOSITION, OR BY MERGER.

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

Section 1. NEW SECTION. 499.47A SALE OR OTHER DISPOSITION OF ASSETS IN REGULAR COURSE OF BUSINESS AND MORTGAGE OR PLEDGE OF ASSETS.

The sale, lease, exchange, or other disposition of the property and assets of a cooperative association, when made in the usual and regular course of the business of the cooperative association, and the mortgage or pledge of any or all of the property and assets of the cooperative association, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation or cooperative association, domestic or foreign, as authorized by its board of directors; and in such case no authorization or consent of the members shall be required.

Sec. 2. NEW SECTION. 499.47B SALE OR OTHER DISPOSITION OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS.

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a cooperative association organized under this chapter, if not made in the usual and regular course of its business, may be made upon the terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other cooperative association organized under this chapter, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending the sale, lease, exchange, or other disposition and

directing the submission thereof to a vote at a meeting of the membership, which may either be an annual or a special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed sale, lease, exchange, or other disposition of substantially all of the property and assets of the cooperative association.

3. At the meeting the membership may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the cooperative association. Such authorization shall be approved if two-thirds of the members vote affirmatively on a ballot in which a majority of all voting members participate.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

Sec. 3. NEW SECTION. 499.47C SALE OR OTHER DISPOSITION OF ASSETS IN EXCHANGE FOR COMMON STOCK.

In addition to the requirements of section 499.47B, in any case where a cooperative association issues its common stock or membership, or subscriptions for common stock or membership, or both, as a part or all of the consideration for the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of another cooperative association, the issuance of such common stock or membership, or subscriptions for common stock or membership, or both, shall be authorized by the issuing cooperative association in the following manner:

HF 356

1. The board of directors shall adopt a resolution recommending the issuance of the common stock or membership, or subscriptions for common stock or membership, or both, and directing the submission thereof to a vote at a meeting of the membership, which may be either an annual or special meeting.

2. Written or printed notice shall be given to each member of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes of the meeting, is to consider the proposed issuance of common stock or membership, or subscriptions for common stock or membership, or both, as consideration for all or a part of the property and assets of the other cooperative association.

3. At the meeting the membership may authorize the issuance and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the property and assets to be received as consideration. Such authorization shall be approved if a majority of the voting members present vote in the affirmative.

4. After such authorization by a vote of members, the board of directors nevertheless, in its discretion, may abandon the issuance, without further action or approval by the members.

If a cooperative association, in connection with its acquisition of property or assets of another cooperative association, agrees to solicit common stock or membership, or subscriptions for common stock or membership to the members of the cooperative association selling such property or assets, the agreement shall not itself constitute the issuance of common stock or membership, or subscriptions for common stock or membership as described in this section. This section shall not apply to a merger as defined in section 499.61.

Sec. 4. Section 499.61, subsection 1, Code 1987, is amended to read as follows:

1. "Merger" means the uniting of two or more co-operative associations into one co-operative association, in such manner that one of the merging associations retains its corporate existence and absorbs the others, which cease to exist as corporate entities. "Merger" does not include the mere acquisition, by purchase or otherwise, of the assets of one co-operative association by another, unless the acquisition only becomes effective by the filing of articles of merger by the associations and the issuance of a certificate of merger pursuant to sections 499.67 and 499.68.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 356, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved  , 1987

TERRY E. BRANSTAD
Governor