

FILED MAR 5 1997

SENATE FILE 299
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 174)

*Substituted for
HF 563 (P. 775)
3-25-97*

(P. 547)

Passed Senate, Date 3-10-97 Passed House, Date 3-25-97 (P. 775)
Vote: Ayes 47 Nays 0 Vote: Ayes 96 Nays 0
Approved April 3, 1997

A BILL FOR

1 An Act relating to cooperative associations and corporations by
2 providing for operations and procedures, including providing
3 for mergers, and providing an effective date.

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

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S.F. 299

1 Section 1. NEW SECTION. 490.1109 QUALIFIED MERGER.

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

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

6 499.13 MEMBERSHIP -- ELIGIBILITY.

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

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

28 499.16 SUBSCRIPTIONS -- ISSUING CERTIFICATES.

29 If permitted by the association's articles permit of
30 incorporation, any eligible subscriber for common stock or
31 membership may vote and be treated as a member, after making
32 part payment ~~therefor~~ for the common stock or membership in
33 cash ~~and~~, giving the subscriber's note for the balance, ~~and~~
34 satisfying any other requirement for the subscription as set
35 forth in the articles. ~~Such-subscriptions~~ A subscription may

1 be forfeited as provided in section 499.32. ~~No-stock~~ Stock or
2 a membership certificate shall not be issued until payment for
3 the stock or membership certificate is fully paid-for made.
4 ~~No~~ A subscriber shall not hold office until the subscriber's
5 certificate has been issued.

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

8 499.22 CAPITAL STOCK.

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

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

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

26 1A. a. A director must be members a member of the
27 association or offieers an officer or members a member of a
28 member-association. They A director shall be elected by the
29 members as prescribed by the association's articles prescribe
30 of incorporation.

31 b. At least five directors shall serve on the
32 association's board. The number of directors shall be
33 established in accordance with the association's articles of
34 incorporation or bylaws. If a board has the power to fix or
35 change the number of directors, the board may increase or

1 decrease by thirty percent or less the number of directors
2 last approved by the members. Only the members may increase
3 or decrease by more than thirty percent the number of
4 directors last approved by the members.

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

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

20 (1) The shareholders.

21 (2) The board.

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

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

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

32 5. The following information regarding the directors:

33 a. Their number of directors; their.

34 b. Whether there is a fixed number or a variable range as
35 provided in section 499.36. If a variable range is

1 established, the information shall include the minimum and
2 maximum number.

3 c. Their qualifications and.

4 d. Their terms of office,--and-how.

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

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

8 NEW SUBSECTION. 3A. "Qualified corporation" means a
9 corporation organized and existing under chapter 490, which is
10 structured and operated on a cooperative basis pursuant to 26
11 U.S.C. § 1381(a)(2) and which meets the definitional
12 requirements of an association as provided in 12 U.S.C. §
13 1141j(a) or 7 U.S.C. § 291.

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

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

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

26 The board of directors of ~~each~~ a cooperative association,
27 upon approving a plan of merger or consolidation, shall, by
28 motion or resolution, direct that the plan be submitted to a
29 vote at a meeting of members, which may be either an annual or
30 special meeting. Written notice shall be given not less than
31 twenty days prior to the meeting, either personally or by mail
32 to each voting member and shareholder of record. The notice
33 shall state the time, place, and purpose of the meeting, and a
34 summary of the plan of merger or consolidation shall be
35 included in or enclosed with the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 b. The plan for the qualified merger.

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

17 d. The name of the qualified survivor.

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

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

32 5. The effect of a qualified merger for a qualified
33 survivor which is a cooperative association shall be as
34 provided for in this chapter. The effect of a qualified
35 merger for a qualified survivor which is a qualified

1 corporation shall be as provided for corporations under
2 chapter 490.

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

13 7. A foreign cooperative association may participate in a
14 qualified merger as provided in this section, if the foreign
15 cooperative association complies with the requirements for a
16 cooperative association under this section and the
17 requirements for a foreign cooperative association under
18 section 499.69. A foreign corporation may participate in a
19 qualified merger as provided in this section if it complies
20 with the requirements of a qualified corporation under this
21 section and the requirements for a foreign corporation under
22 section 490.1107.

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

25 EXPLANATION

26 Code chapter 499 governs the organization and regulation of
27 cooperative associations. This bill amends a number of
28 provisions in the chapter, including the following:

29 Code section 499.13 provides for membership eligibility.
30 The bill amends a provision which allows associations to
31 become members of other associations, including federated
32 associations. The bill changes this provision by providing
33 that a cooperative association may be a member of an
34 association and that an association may be formed which
35 includes among its members cooperative associations.

1 Code section 499.16 provides requirements for subscribers
2 purchasing common stock or membership interest in an
3 association. The bill provides that the subscriber must
4 satisfy any requirement set forth in the association's
5 articles of incorporation in order to be eligible to make the
6 purchase.

7 Code section 499.22 provides for an association's capital
8 stock requirements. The bill amends this section by providing
9 that voting stock or nonvoting stock may be issued to a
10 cooperative association as provided in the cooperative
11 association's articles of incorporation.

12 Code section 499.36 provides for an association's board of
13 directors. The bill contains provisions similar to provisions
14 contained in Code chapter 490 providing for the organization
15 and regulation of corporations. The bill authorizes a board
16 of directors to increase or decrease the number of directors
17 sitting on the board but not by more than 30 percent of the
18 number last approved by the membership. The bill provides
19 that the articles of incorporation may establish a variable
20 range for the size of the board, with membership changing
21 within limits set in the articles. The bill provides that,
22 after shares are issued, only the membership may change the
23 range for the size of the board, change from a fixed to a
24 variable-range-size board, or change from a variable-size to a
25 fixed-size board. The bill amends provisions relating to
26 vacancies by providing that a vacancy may be filled by the
27 shareholders, the board, or the unanimous vote of board
28 members constituting less than a quorum. The bill also
29 provides for filling vacancies occurring at a future time
30 because of a resignation.

31 Code section 499.40 relates to information required to be
32 included in an association's articles of incorporation. The
33 bill provides that information regarding the board of
34 directors must include whether there is a fixed number or a
35 variable range and the minimum and maximum numbers that the

1 board may have.

2 Code section 499.64 provides for voting by members and
3 shareholders on a plan of merger or consolidation. The bill
4 provides that notice of a meeting for the vote must be
5 delivered to voting members and shareholders rather than all
6 members and shareholders.

7 Code section 499.69A provides that a cooperative
8 association may merge with a certain type of corporation
9 referred to in the bill as a qualified corporation. A
10 qualified corporation must be structured and operated on a
11 cooperative basis pursuant to federal law. The merger
12 involves the two or more entities into one cooperative
13 association or qualified corporation, in such manner that one
14 entity involved in the merger retains its existence and
15 absorbs the others.

16 The Code section provides that a cooperative association
17 and a qualified corporation may unite in a qualified merger.
18 The bill provides that each cooperative association and
19 qualified corporation must approve a written plan of qualified
20 merger setting forth information regarding the entities and
21 the merger. The entities must approve the plan as required
22 for other mergers under their respective chapters. After the
23 plan for the qualified merger is approved, a cooperative
24 association or qualified corporation may abandon the merger in
25 the manner provided in the plan, prior to the filing of the
26 articles of merger. After the plan is approved, the surviving
27 entity must deliver articles of merger to the secretary of
28 state for filing. The Code section provides information
29 required to be included in the articles regarding the
30 entities, the plan, the name of the survivor, and how the plan
31 was approved. The Code section provides for when the merger
32 becomes effective. The Code section provides that the effect
33 of a qualified merger is as provided for the surviving entity
34 in the chapter of its organization. The Code section requires
35 that provisions governing the right of a shareholder or member

1 to object or dissent from and obtain payment of the fair value
2 of the shareholder's shares or member's interest is the same
3 as a merger between cooperative associations or corporations
4 under an ordinary merger. The Code section provides that the
5 cooperative association or corporation may be a foreign
6 cooperative association or corporation which complies with
7 sections applicable to those entities under their respective
8 chapters.

9 The bill takes effect upon enactment.

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Angelo, chair
Fraisé
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SSB 174

~~Agriculture~~
Succeeded By
SF HF 299

SENATE FILE
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON RENSINK)

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

A BILL FOR

1 An Act relating to cooperative associations by providing for
2 operations and procedures of the associations.

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

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1 Section 1. Section 499.13, Code 1997, is amended to read
2 as follows:

3 499.13 MEMBERSHIP -- ELIGIBILITY.

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

23 Sec. 2. Section 499.16, Code 1997, is amended to read as
24 follows:

25 499.16 SUBSCRIPTIONS -- ISSUING CERTIFICATES.

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

1 No A subscriber shall not hold office until the subscriber's
2 certificate has been issued.

3 Sec. 3. Section 499.22, Code 1997, is amended to read as
4 follows:

5 499.22 CAPITAL STOCK.

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

19 Sec. 4. Section 499.36, subsections 1 and 2, Code 1997,
20 are amended to read as follows:

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

23 1A. a. A director must be members a member of the
24 association or officers an officer or members a member of a
25 member-association. They A director shall be elected by the
26 members as prescribed by the association's articles prescribe
27 of incorporation.

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

1 directors last approved by the members.

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

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12 vacancies in if a vacancy occurs on the board shall, including
13 a vacancy resulting from an increase in the number of
14 directors, the vacancy may be filled by the remaining
15 directors, the director thus selected to serve for the
16 remainder of the vacant term: any of the following:

17 (1) The shareholders.

18 (2) The board.

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

23 b. A vacancy that will occur at a specific later date, by
24 reason of a resignation effective at a later date, may be
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26 take office until the vacancy occurs.

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

29 5. The following information regarding the directors:

30 a. Their number of directors, their.

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

35 c. Their qualifications and.

1 d. Their terms of office~~7-and-how.~~

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

3 Sec. 6. Section 499.44, Code 1997, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 3A. A document required to be filed with
6 the secretary of state pursuant to this chapter is effective
7 at the later of the following times:

8 a. The time of filing on the date it is filed, as
9 evidenced by the secretary of state's date and time
10 endorsement on the original document.

11 b. The delayed effective time and date specified in the
12 document. If a delayed effective date but no time is
13 specified in the document, the document is effective at the
14 close of business on that date. A delayed effective date for
15 a document shall not be later than the ninetieth day after the
16 date it is filed.

17 Sec. 7. Section 499.64, unnumbered paragraph 1, Code 1997,
18 is amended to read as follows:

19 The board of directors of each a cooperative association,
20 upon approving a plan of merger or consolidation, shall, by
21 motion or resolution, direct that the plan be submitted to a
22 vote at a meeting of members, which may be either an annual or
23 special meeting. Written notice shall be given not less than
24 twenty days prior to the meeting, either personally or by mail
25 to each voting member and shareholder of record. The notice
26 shall state the time, place, and purpose of the meeting, and a
27 summary of the plan of merger or consolidation shall be
28 included in or enclosed with the notice.

29 EXPLANATION

30 Code chapter 499 governs the organization and regulation of
31 cooperative associations. This bill amends a number of
32 provisions in the chapter, including the following:

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34 The bill amends a provision which allows associations to
35 become members of other associations, including federated

1 associations. The bill changes this provision by providing
2 that a cooperative association may be a member of an
3 association and that an association may be formed which
4 includes among its members cooperative associations.

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6 purchasing common stock or membership interest in an
7 association. The bill provides that the subscriber must
8 satisfy any requirement set forth in the association's
9 articles of incorporation in order to be eligible to make the
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SSB 174

1 included in an association's articles of incorporation. The
2 bill provides that information regarding the board of
3 directors must include whether there is a fixed number or a
4 variable range and the minimum and maximum numbers that the
5 board may have.

6 Code section 499.44 relates to the execution and filing of
7 documents. The bill provides that a document required to be
8 filed with the secretary of state under the chapter becomes
9 effective at the time of filing or the delayed effective date
10 specified in the document.

11 Code section 499.64 provides for voting by members and
12 shareholders on a plan of merger or consolidation. The bill
13 provides that notice of a meeting for the vote must be
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SENATE FILE 299

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RELATING TO COOPERATIVE ASSOCIATIONS AND CORPORATIONS BY
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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 bylaws. 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.~~

~~(j) 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.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 299, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved *April 3* 1997

TERRY E. BRANSTAD
Governor