

MAR 12 2004
Place On Calendar

HOUSE FILE 2539
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 673)

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

A BILL FOR

1 An Act to permit a state bank to organize as a limited liability
2 company.

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

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HF 2539

1 Section 1. Section 422.11, Code 2003, is amended to read
2 as follows:

3 422.11 FRANCHISE TAX CREDIT.

4 The taxes imposed under this division, less the credits
5 allowed under section 422.12, shall be reduced by a franchise
6 tax credit. A taxpayer who is a shareholder in a financial
7 institution, as defined in section 581 of the Internal Revenue
8 Code, which has in effect for the tax year an election under
9 subchapter S of the Internal Revenue Code, or is a member of a
10 financial institution organized as a limited liability company
11 under chapter 524 that is taxed as a partnership for federal
12 income tax purposes, shall compute the amount of the tax
13 credit by recomputing the amount of tax under this division by
14 reducing the taxable income of the taxpayer by the taxpayer's
15 pro rata share of the items of income and expense of the
16 financial institution and subtracting the credits allowed
17 under section 422.12. This recomputed tax shall be subtracted
18 from the amount of tax computed under this division after the
19 deduction for credits allowed under section 422.12. The
20 resulting amount, which shall not exceed the taxpayer's pro
21 rata share of the franchise tax paid by the financial
22 institution, is the amount of the franchise tax credit
23 allowed.

24 Sec. 2. Section 524.103, subsections 6, 8, 17, 20, 30, 31,
25 and 33, Code 2003, are amended to read as follows:

26 6. "Articles of incorporation" means the original or
27 restated articles of incorporation and all amendments thereto
28 and includes articles of merger. "Articles of incorporation"
29 also means the original or restated articles of organization
30 and all amendments including articles of merger if a state
31 bank is organized as a limited liability company under this
32 chapter.

33 8. "Bank" means a corporation or limited liability company
34 organized under this chapter or 12 U.S.C. § 21.

35 17. "Control" means when a person, directly or indirectly

1 or acting through or together with one or more persons,
2 satisfies any of the following:

3 a. Owns, controls, or has the power to vote fifty percent
4 or more of any class of voting securities or membership
5 interests of another person.

6 b. Controls, in any manner, the election of a majority of
7 the directors, managers, trustees, or other persons exercising
8 similar functions of another person.

9 c. Has the power to exercise a controlling influence over
10 the management or policies of another person.

11 20. "Executive officer" means a person who participates or
12 has authority to participate, other than in the capacity of a
13 director or manager, in major policymaking functions of a
14 state bank, whether or not the officer has an official title,
15 whether or not such a title designates the officer as an
16 assistant, or whether or not the officer is serving without
17 salary or other compensation. The chief executive officer,
18 chairperson of the board, the president, every vice president,
19 and the cashier of a state bank are deemed to be executive
20 officers, unless such an officer is excluded, by resolution of
21 the board of directors of a state bank or by the bylaws of the
22 state bank, from participation, other than in the capacity of
23 a director, in major policymaking functions of the state bank,
24 and the officer does not actually participate in the major
25 policymaking functions. All officers who serve on a board of
26 directors are deemed to be executive officers, except as
27 provided for in section 524.701, subsection 3.

28 30. "Shareholder" means one who is a holder of record of
29 shares in a state bank. If a state bank is organized as a
30 limited liability company under this chapter, "shareholder"
31 means any member of the limited liability company.

32 31. "Shares" means the units into which the proprietary
33 interests in a state bank are divided, including any
34 membership interests of a state bank organized as a limited
35 liability company under this chapter.

1 33. "State bank" means any bank incorporated pursuant to
2 the provisions of this chapter after January 1, 1970, and any
3 "state bank" or "savings bank" incorporated pursuant to the
4 laws of this state and doing business as such on January 1,
5 1970, or organized as a limited liability company under this
6 chapter.

7 Sec. 3. Section 524.103, Code 2003, is amended by adding
8 the following new subsections:

9 NEW SUBSECTION. 9A. "Board of directors" means the board
10 of directors of a state bank as provided in section 524.601.
11 For state banks organized as a limited liability company under
12 this chapter, "board of directors" means a board of directors
13 or board of managers as designated by the limited liability
14 company in its articles of organization or operating
15 agreement.

16 NEW SUBSECTION. 18A. "Director" means a member of the
17 board of directors and includes a manager of a state bank
18 organized as a limited liability company under this chapter.

19 NEW SUBSECTION. 23A. "Manager" means a person designated
20 by the members to manage a state bank organized as a limited
21 liability company under this chapter as provided in the
22 articles of organization or an operating agreement and may
23 include a member of the board of directors.

24 NEW SUBSECTION. 23B. "Member" means a person with a
25 membership interest in a state bank organized as a limited
26 liability company under this chapter.

27 NEW SUBSECTION. 23C. "Membership interest" means a
28 member's share of the profits and losses, the right to receive
29 distributions of assets, and any right to vote or participate
30 in management, of a state bank organized as a limited
31 liability company under this chapter.

32 Sec. 4. Section 524.301, Code 2003, is amended to read as
33 follows:

34 524.301 INCORPORATORS -- ORGANIZERS.

35 A state bank may be incorporated or organized as a limited

1 liability company under this chapter by one or more
2 individuals eighteen years of age or older, a majority of whom
3 shall be residents of this state and citizens of the United
4 States.

5 Sec. 5. NEW SECTION. 524.302A ARTICLES OF INCORPORATION
6 -- LIMITED LIABILITY COMPANY.

7 1. The articles of incorporation of a state bank organized
8 as a limited liability company under this chapter shall be in
9 the form prescribed by the superintendent, and shall set forth
10 all of the following:

11 a. The name of the state bank, that it is organized for
12 the purpose of conducting the business of banking, and that it
13 is organized under the provisions of this chapter.

14 b. The street address of the limited liability company's
15 initial registered office and the name of its initial
16 registered agent at that office.

17 c. The location of the state bank's proposed principal
18 office of the limited liability company, which may be the same
19 as the registered office, but need not be within this state.

20 d. The duration of the state bank, which shall be
21 perpetual.

22 e. The aggregate number of common and preferred shares
23 which the state bank shall have authority to issue and the par
24 value of such shares. If such shares are to be divided into
25 classes or series, the number of shares of each class or
26 series and a statement of the par value of the shares of each
27 class or series.

28 f. The number of managers constituting the initial board
29 of directors and the names and addresses of the individuals
30 who are to serve as directors until successors are elected and
31 qualify. A statement that the exclusive authority to manage
32 the state bank is vested in a board of directors that is
33 elected or appointed by the members, that operates in
34 substantially the same manner as, and has substantially the
35 same rights, powers, privileges, duties, and responsibilities

1 as, a board of directors of a state bank chartered as a
2 corporation under this chapter.

3 g. A provision that the articles of incorporation,
4 operating agreement, or other organizational documents of the
5 state bank shall not require the consent of any other owner in
6 order for an owner to transfer membership interests in the
7 state bank, including voting rights.

8 2. The articles of incorporation may set forth any or all
9 of the following:

10 a. Provisions not inconsistent with law regarding
11 management of the business and regulation of the affairs of
12 the state bank.

13 b. Any provision required or permitted by this chapter to
14 be set forth in the operating agreement.

15 3. The articles of incorporation need not set forth any of
16 the organizational powers enumerated in this chapter.

17 Sec. 6. Section 524.303, Code 2003, is amended to read as
18 follows:

19 524.303 APPLICATION FOR APPROVAL.

20 The incorporators or organizers shall make an application
21 to the superintendent for approval of a proposed state bank in
22 the manner prescribed by the superintendent and shall deliver
23 to the superintendent, together with such application:

24 1. The articles of incorporation.

25 2. Applicable fees, payable to the secretary of state as
26 specified in section 490.122 or 490A.124, for the filing and
27 recording of the articles of incorporation.

28 Sec. 7. Section 524.304, subsection 1, Code 2003, is
29 amended to read as follows:

30 1. The incorporators or organizers of a state bank shall,
31 within thirty days of the acceptance of the application for
32 processing, publish notice of the proposed incorporation or
33 organization once each week for two successive weeks in a
34 newspaper of general circulation published in the municipal
35 corporation which is proposed as the principal place of

1 business of the state bank, or if there is none, a newspaper
2 of general circulation published in the county, or in a county
3 adjoining the county, in which the proposed state bank is to
4 have its principal place of business. The notice shall set
5 forth all of the following:

6 a. The name of the proposed state bank.

7 b. A statement that it is to be incorporated or organized
8 under this chapter.

9 c. The purpose or purposes of the state bank.

10 d. The names and addresses of the incorporators or
11 organizers and of the members of the initial board of
12 directors or board of directors as they appear, or will
13 appear, in the articles of incorporation.

14 e. The date the application was accepted for processing.

15 f. If the incorporation or organization of the state bank
16 has been approved by the superintendent under section 524.305,
17 subsection 8, the name and address of the bank with which the
18 state bank will have merged, or the assets of which the state
19 bank will have acquired or the condition of which in some
20 other way provided a purpose for the incorporation or
21 organization.

22 Sec. 8. Section 524.305, subsection 1, paragraph d, Code
23 2003, is amended to read as follows:

24 d. The character and fitness of the incorporators or
25 organizers and of the members of the initial board of
26 directors are such as to command the confidence of the
27 community and to warrant the belief that the business of the
28 proposed state bank will be honestly and efficiently
29 conducted.

30 Sec. 9. Section 524.305, subsections 6, 7, and 9, Code
31 2003, are amended to read as follows:

32 6. If the superintendent approves the application, the
33 superintendent shall notify the incorporators or organizers,
34 and such other persons who requested in writing that they be
35 notified, of the approval. If the superintendent disapproves

1 the application, the superintendent shall notify the
2 incorporators or organizers of the action and the reason for
3 the decision.

4 7. The actions of the superintendent shall be subject to
5 judicial review in accordance with chapter 17A. The court may
6 award damages to the incorporators or organizers if it finds
7 that review is sought frivolously or in bad faith.

8 9. As a condition of receiving the decision of the
9 superintendent with respect to the application the
10 incorporators or organizers shall reimburse the superintendent
11 for all expenses incurred by the superintendent in connection
12 with the application.

13 Sec. 10. Section 524.306, Code 2003, is amended to read as
14 follows:

15 524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

16 1. Unless a delayed effective date or time is specified,
17 the corporate or organizational existence of a state bank
18 begins when the articles of incorporation, with the
19 superintendent's approval indicated on the articles of
20 incorporation, are filed with the secretary of state. The
21 secretary of state shall record the articles of incorporation
22 and forward a copy of them to the county recorder of the
23 county in which the state bank is to have its principal place
24 of business.

25 2. The secretary of state's acknowledgment of filing of
26 the articles of incorporation is conclusive proof that the
27 incorporators or organizers satisfied all conditions precedent
28 to incorporation or organization, except in a proceeding
29 instituted by the superintendent to cancel or revoke the
30 incorporation or involuntarily dissolve the corporation or
31 organization.

32 Sec. 11. Section 524.307, Code 2003, is amended to read as
33 follows:

34 524.307 INITIAL ORGANIZATION OF STATE BANK.

35 Upon incorporation, or organization as a limited liability

1 company, of the state bank, the initial board of directors
2 shall hold an organizational meeting within this state, at the
3 call of a majority of the directors, to complete the
4 organization of the state bank by electing officers, adopting
5 bylaws, if any are to be adopted, and conducting any other
6 business properly brought before the board at the meeting.

7 Sec. 12. Section 524.308, subsection 2, Code 2003, is
8 amended to read as follows:

9 2. If a state bank transacts any business before receipt
10 of an authorization to do business in violation of subsection
11 1, the directors, managers, and officers who willfully
12 authorized or participated in the action are severally liable
13 for the debts and liabilities of the state bank incurred prior
14 to the receipt of the authorization to do business.

15 Sec. 13. Section 524.310, Code 2003, is amended to read as
16 follows:

17 524.310 NAME OF STATE BANK.

18 1. The name of a state bank originally incorporated or
19 organized after the effective date of this chapter shall
20 include the word "bank" and may include the word "state" or
21 "trust" in its name. A state bank using the word "trust" in
22 its name must be authorized under this chapter to act in a
23 fiduciary capacity.

24 2. The provisions of this section shall not require any
25 state bank, existing and operating on January 1, 1970, to add
26 to, modify or otherwise change its corporate or organizational
27 name, either on January 1, 1970, or upon renewal of its
28 corporate existence pursuant to section 524.314.

29 3. If a state bank existing and operating on January 1,
30 1970, causes its corporate or organizational name to be
31 changed, the name as changed shall comply with subsection 1 of
32 this section.

33 4. a. A person may reserve the exclusive use of a
34 corporate or organizational name for a state bank by
35 delivering an application to the secretary of state for

1 filing. The application must set forth the name and address
2 of the applicant and the name proposed to be reserved. If the
3 secretary of state finds that the corporate or organizational
4 name applied for is available, the secretary of state shall
5 reserve the name for the applicant's exclusive use for a
6 nonrenewable one hundred twenty day period.

7 b. The owner of a reserved corporate or organizational
8 name may transfer the reservation to another person by
9 delivering to the secretary of state a signed notice of the
10 transfer that states the name and address of the transferee.

11 Sec. 14. Section 524.312, subsections 1 and 5, Code 2003,
12 are amended to read as follows:

13 1. A state bank originally incorporated or organized
14 pursuant to this chapter shall have its principal place of
15 business within the city limits of a municipal corporation.
16 The existence of a state bank shall not, however, be affected
17 by the subsequent discontinuance of the municipal corporation.
18 A state bank existing and operating on January 1, 1970, which
19 does not have its principal place of business within the city
20 limits of a municipal corporation, may renew its corporate or
21 organizational existence pursuant to section 524.314 without
22 regard to this section and may also operate as a bank or
23 convert to and operate as a bank office when acquired by or
24 merged into another state bank and approved by the
25 superintendent.

26 5. A state bank approved under the provisions of section
27 524.305, subsection 8, shall not commence its business at any
28 location other than within a municipal corporation or
29 unincorporated area in which was located the principal place
30 of business or an office of the bank the condition of which
31 was the basis for the superintendent authorizing incorporation
32 or organization of the new state bank.

33 Sec. 15. Section 524.313, Code 2003, is amended to read as
34 follows:

35 524.313 BYLAWS.

1 A state bank may adopt bylaws. The power to adopt, amend,
2 or repeal bylaws or adopt new bylaws is vested in the board of
3 directors unless reserved to the shareholders by the articles
4 of incorporation. The bylaws may contain any provisions for
5 the regulation and management of the affairs of the state bank
6 not inconsistent with law or the articles of incorporation.
7 For a state bank organized as a limited liability company
8 under this chapter, "bylaws" means the operating agreement of
9 the state bank.

10 Sec. 16. NEW SECTION. 524.315 STATE BANKS AS LIMITED
11 LIABILITY COMPANIES.

12 1. A state bank organized as a limited liability company
13 under this chapter shall also be subject to chapter 490A, the
14 Iowa limited liability company Act. If a provision of the
15 Iowa limited liability company Act conflicts with a provision
16 of this chapter or any rule of the superintendent adopted
17 pursuant to this chapter, the provisions of this chapter or
18 rule of the superintendent shall control.

19 2. The superintendent shall possess the exclusive
20 authority to regulate a state bank organized as a limited
21 liability company under this chapter.

22 3. The superintendent may adopt rules to ensure that a
23 state bank organized as a limited liability company under this
24 chapter is operating in a safe and sound manner and is subject
25 to the superintendent's authority in the same manner as a
26 state bank organized as a corporation.

27 Sec. 17. Section 524.401, subsections 2, 3, and 4, Code
28 2003, are amended to read as follows:

29 2. The minimum capital structure of a state bank
30 incorporated after July 1, 1995, or organized after July 1,
31 2004, pursuant to the provisions of this chapter shall not be
32 less than the amount required by the federal deposit insurance
33 corporation, or its successor, or a greater amount which the
34 superintendent may deem necessary in view of the deposit
35 potential of the state bank and current banking standards

1 relating to total capital requirements.

2 3. A state bank incorporated on or after July 1, 1995, or
3 organized after July 1, 2004, pursuant to this chapter, prior
4 to receiving authorization to do business from the
5 superintendent, shall establish paid-in surplus and undivided
6 profits as required by the superintendent.

7 4. A state bank originally incorporated or organized
8 pursuant to this chapter shall establish, prior to receiving
9 authorization to do business from the superintendent, paid-in
10 surplus and undivided profits as required by the
11 superintendent.

12 Sec. 18. Section 524.525, Code 2003, is amended to read as
13 follows:

14 524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR
15 ORGANIZATION.

16 1. A subscription for shares entered into before
17 incorporation or organization of the state bank is irrevocable
18 for six months unless the subscription agreement provides a
19 longer or shorter period, or all subscribers agree to
20 revocation.

21 2. The board of directors may determine the payment terms
22 of subscriptions for shares that were entered into before
23 incorporation or organization of the state bank unless the
24 subscription agreement specifies the terms. A call for
25 payment by the board of directors must be uniform so far as
26 practicable as to all shares of the same class or series,
27 unless the subscription agreement specifies otherwise.

28 3. Shares issued pursuant to subscriptions entered into
29 before incorporation or organization of the state bank are
30 fully paid and nonassessable when the state bank receives the
31 consideration specified in the subscription agreement.

32 4. If a subscriber defaults in payment of money or
33 property under a subscription agreement entered into before
34 incorporation or organization of the state bank, the state
35 bank may do either of the following:

1 a. Collect the amount owed as any other debt.

2 b. Unless the subscription agreement provides otherwise,
3 the state bank may rescind the agreement and may sell the
4 shares if the debt remains unpaid more than twenty days after
5 the state bank sends written demand for payment to the
6 subscriber.

7 Sec. 19. Section 524.528, subsection 2, paragraph c, Code
8 2003, is amended to read as follows:

9 c. There is no preemptive right with respect to any of the
10 following:

11 (1) Shares issued as compensation to directors, managers,
12 officers, agents, or employees of the state bank, its
13 subsidiaries, or its affiliates.

14 (2) Shares issued to satisfy conversion or option rights
15 created to provide compensation to directors, managers,
16 officers, agents, or employees of the state bank, its
17 subsidiaries, or its affiliates.

18 (3) Shares authorized in articles of incorporation that
19 are issued within six months from the effective date of
20 incorporation or organization.

21 Sec. 20. Section 524.801, subsection 1, Code 2003, is
22 amended to read as follows:

23 1. To sue and be sued, complain and defend, in its
24 corporate or organizational name.

25 Sec. 21. Section 524.801, unnumbered paragraph 2, Code
26 2003, is amended to read as follows:

27 The powers granted in this section shall not be construed
28 as limiting or enlarging any grant of authority made elsewhere
29 in this chapter, or as a limitation on the purposes for which
30 a state bank may be incorporated or organized.

31 Sec. 22. Section 524.1301, Code 2003, is amended to read
32 as follows:

33 524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR
34 INITIAL DIRECTORS.

35 A majority of the incorporators, organizers, or initial

1 directors of a state bank that has not issued shares or has
2 not commenced business may dissolve the state bank by
3 delivering articles of dissolution to the superintendent,
4 together with the applicable filing and recording fees, for
5 filing with the secretary of state that set forth all of the
6 following:

- 7 1. The name of the state bank.
- 8 2. The date of its incorporation or organization.
- 9 3. Either of the following:
 - 10 a. That the state bank has not issued any shares.
 - 11 b. That the state bank has not commenced business.
- 12 4. That no debt of the state bank remains unpaid.
- 13 5. If shares were issued, that the net assets of the state
14 bank remaining after the payment of all necessary expenses
15 have been distributed to the shareholders.
- 16 6. That a majority of the incorporators, organizers, or
17 initial directors authorized the dissolution.

18 Sec. 23. Section 524.1302, Code 2003, is amended to read
19 as follows:

20 524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF
21 BUSINESS.

22 Prior to the issuance of an authorization to do business,
23 the superintendent may cause the dissolution of a state bank
24 if there exists any reason why it should not have been
25 incorporated or organized under this chapter or if an
26 authorization to do business has not been issued within one
27 year after the date of its incorporation or organization, or
28 such longer time as the superintendent may allow for
29 satisfaction of conditions precedent to its issuance. After
30 giving the state bank adequate notice and an opportunity for
31 hearing, the superintendent shall certify the applicable facts
32 by the filing of a statement with the secretary of state, who
33 shall thereafter issue a certificate of dissolution. Upon the
34 issuance of such certificate of dissolution by the secretary
35 of state, the corporate or organizational existence of the

1 state bank shall cease.

2 Sec. 24. Section 524.1309, Code 2003, is amended to read
3 as follows:

4 524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

5 In lieu of the dissolution procedure prescribed in sections
6 524.1303 to 524.1306, a state bank may cease to carry on the
7 business of banking and, after compliance with this section,
8 continue as a corporation subject to chapter 490; or if the
9 state bank is organized as a limited liability company under
10 this chapter, continue as a limited liability company subject
11 to chapter 490A.

12 1. A state bank ~~which~~ that has commenced business may
13 propose to voluntarily cease to carry on the business of
14 banking and become a corporation subject to chapter 490, or a
15 limited liability company subject to chapter 490A, upon the
16 affirmative vote of the holders of at least a majority of the
17 shares entitled to vote on such proposal, adopting a plan
18 involving both a provision for acquisition of its assets and
19 assumption of its liabilities by another state bank, national
20 bank, or other financial institution insured by the federal
21 deposit insurance corporation, and a provision for continuance
22 of its business if acquisition of its assets and assumption of
23 its liabilities is not effected, or any other plan providing
24 for the cessation of banking business and the payment of its
25 liabilities.

26 2. The application to the superintendent for approval of a
27 plan described in subsection 1 ~~of this section~~ shall be
28 treated by the superintendent in the same manner as an
29 application for approval of a plan of dissolution under
30 ~~subsection-2-of~~ section 524.1303, subsection 2, and shall be
31 subject to ~~subsection-3-of~~ section 524.1303, subsection 3.

32 3. Immediately upon adoption and approval of a plan to
33 voluntarily cease to carry on the business of banking and
34 become a corporation subject to chapter 490, or a limited
35 liability company subject to chapter 490A, the state bank

1 shall deliver to the superintendent a plan to cease the
2 business of banking and become a corporation subject to
3 chapter 490, or a limited liability company subject to chapter
4 490A, which shall be signed by two of its duly authorized
5 officers and shall contain the name of the state bank, the
6 post office address of its principal place of business, the
7 name and address of its officers and directors, the number of
8 shares entitled to vote on the plan and the number of shares
9 voted for or against the plan, respectively, the nature of the
10 business to be conducted by the corporation under chapter 490,
11 or by the limited liability company subject to chapter 490A,
12 and the general nature of the assets to be held by the
13 corporation or company.

14 4. Upon approval of the plan by the superintendent, the
15 state bank shall immediately surrender to the superintendent
16 its authorization to do business as a bank and shall cease to
17 accept deposits and carry on the banking business except
18 insofar as may be necessary for it to complete the settlement
19 of its affairs as a state bank in accordance with subsection
20 5.

21 5. The board of directors has full power to complete the
22 settlement of the affairs of the state bank. Within thirty
23 days after approval by the superintendent of the plan to cease
24 the business of banking and become a corporation subject to
25 chapter 490, or a limited liability company subject to chapter
26 490A, the state bank shall give notice of its intent to
27 persons identified in section 524.1305, subsection 4, in the
28 manner provided for in that subsection. In completing the
29 settlement of its affairs as a state bank the state bank shall
30 also follow the procedure prescribed in section 524.1305,
31 subsections 4, 5, and 6.

32 6. Upon completion of all the requirements of this
33 section, the state bank shall deliver to the superintendent
34 articles of intent to be subject to chapter 490 or 490A,
35 together with the applicable filing and recording fees, which

1 shall set forth that the state bank has complied with this
2 section, that it has ceased to carry on the business of
3 banking, and the information required by section 490.202
4 relative to the contents of articles of incorporation under
5 chapter 490, or article of organization under chapter 490A.
6 If the superintendent finds that the state bank has complied
7 with this section and that the articles of intent to be
8 subject to chapter 490 or 490A satisfy the requirements of
9 this section, the superintendent shall deliver them to the
10 secretary of state for filing and recording in the secretary
11 of state's office, and they shall be filed and recorded in the
12 office of the county recorder.

13 7. Upon the filing of the articles of intent to be subject
14 to chapter 490 or 490A, the state bank shall cease to be a
15 state bank subject to this chapter, and shall cease to have
16 the powers of a state bank subject to this chapter and shall
17 become a corporation subject to chapter 490 or a limited
18 liability company subject to chapter 490A. The secretary of
19 state shall issue a certificate as to the filing of the
20 articles of intent to be subject to chapter 490 or 490A, and
21 send the certificate to the corporation or limited liability
22 company or its representative. The articles of intent to be
23 subject to chapter 490 or 490A shall be the articles of
24 incorporation of the corporation or a limited liability
25 company. The provisions of chapter 490 or 490A becoming
26 applicable to a corporation or limited liability company
27 formerly doing business as a state bank shall not affect any
28 right accrued or established, or liability or penalty incurred
29 under this chapter prior to the filing with the secretary of
30 state of the articles of intent to be subject to chapter 490
31 or 490A.

32 8. A shareholder of a state bank who objects to adoption
33 by the state bank of a plan to cease to carry on the business
34 of banking and to continue as a corporation subject to chapter
35 490, or a limited liability company subject to chapter 490A,

1 is entitled to appraisal rights provided for in chapter 490,
2 division XIII, or in chapter 490A, subchapter VII.

3 9. A state bank, at any time prior to the approval of the
4 articles of intent to become subject to chapter 490 or 490A,
5 may revoke the proceedings in the manner prescribed by section
6 524.1306.

7 Sec. 25. Section 524.1405, subsection 2, paragraph f, Code
8 2003, is amended to read as follows:

9 f. The shares of each party to the merger that are to be
10 converted into shares, obligations, or other securities of the
11 surviving party or any other corporation or limited liability
12 company or into cash or other property are converted, and the
13 former holders of the shares are entitled only to the rights
14 provided in the articles of merger or to their rights under
15 section 524.1406.

16 Sec. 26. Section 524.1408, Code 2003, is amended to read
17 as follows:

18 524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY
19 COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

20 A state bank owning at least ninety percent of the
21 outstanding shares, of each class, of another corporation or
22 limited liability company which it is authorized to own under
23 this chapter, may merge the other corporation or limited
24 liability company into itself without approval by a vote of
25 the shareholders of either the state bank or the subsidiary
26 corporation or limited liability company. The board of
27 directors of the state bank shall approve a plan of merger,
28 mail to shareholders of record of the subsidiary corporation
29 or holders of membership interests in the subsidiary limited
30 company, and prepare and execute articles of merger in the
31 manner provided for in section 490.1105. The articles of
32 merger, together with the applicable filing and recording
33 fees, shall be delivered to the superintendent who shall, if
34 the superintendent approves of the proposed merger and if the
35 superintendent finds the articles of merger satisfy the

1 requirements of this section, deliver them to the secretary of
2 state for filing and recording in the secretary of state's
3 office, and they shall be filed in the office of the county
4 recorder. The secretary of state upon filing the articles of
5 merger shall issue a certificate of merger and send the
6 certificate to the state bank and a copy of it to the
7 superintendent.

8 Sec. 27. Section 524.1802, subsection 1, Code 2003, is
9 amended by adding the following new paragraph:

10 NEW PARAGRAPH. gg. "Incorporated in any state" means a
11 limited liability company organized as a state bank under this
12 chapter and a limited liability company organized as a state
13 bank under the laws of any state as defined in 12 U.S.C. §
14 1813(a)(3).

15 Sec. 28. Section 524.2001, Code 2003, is amended to read
16 as follows:

17 524.2001 APPLICABILITY OF OTHER CHAPTERS.

18 Chapters 490, 490A, 491, 492, and 493 do not apply to banks
19 except as provided by this chapter.

20 EXPLANATION

21 This bill permits a state bank to be organized as a limited
22 liability company.

23 The bill provides for the content of the articles of
24 incorporation of a state bank as a limited liability company.
25 The definitions of "articles of incorporation", "shareholder",
26 "shares", and "bylaws" are amended to include the organization
27 of and membership interests in limited liability companies.
28 New definitions are provided for "board of directors",
29 "director", "manager", "member", and "membership interest" to
30 reflect the application to state banks as limited liability
31 companies. A state bank organized as a limited liability
32 company must also comply with Code chapter 490A, except where
33 conflicts occur, Code chapter 524 controls. The
34 superintendent of banking may adopt rules to regulate state
35 banks that are organized as limited liability companies.

1 The bill makes numerous corresponding terminology changes
2 throughout Code chapter 524, and also to Code section 422.11
3 regarding the franchise tax credit, to reflect that a state
4 bank may be either a corporation or a limited liability
5 company.

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SANDS, CH
JENKINS
WISE

HSB 673
COMMERCE, REGULATION & LABOR
HOUSE FILE _____

BY (PROPOSED COMMITTEE
ON COMMERCE, REGULATION
AND LABOR BILL BY
CHAIRPERSON JENKINS)

Suc ed By
ST O 2539

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

A BILL FOR

1 An Act to permit a state bank to organize as a limited liability
2 company.

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

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1 Section 1. Section 422.11, Code 2003, is amended to read
2 as follows:

3 422.11 FRANCHISE TAX CREDIT.

4 The taxes imposed under this division, less the credits
5 allowed under section 422.12, shall be reduced by a franchise
6 tax credit. A taxpayer who is a shareholder in a financial
7 institution, as defined in section 581 of the Internal Revenue
8 Code, which has in effect for the tax year an election under
9 subchapter S of the Internal Revenue Code, or is a member of a
10 financial institution organized as a limited liability company
11 under chapter 524 that is taxed as a partnership for federal
12 income tax purposes, shall compute the amount of the tax
13 credit by recomputing the amount of tax under this division by
14 reducing the taxable income of the taxpayer by the taxpayer's
15 pro rata share of the items of income and expense of the
16 financial institution and subtracting the credits allowed
17 under section 422.12. This recomputed tax shall be subtracted
18 from the amount of tax computed under this division after the
19 deduction for credits allowed under section 422.12. The
20 resulting amount, which shall not exceed the taxpayer's pro
21 rata share of the franchise tax paid by the financial
22 institution, is the amount of the franchise tax credit
23 allowed.

24 Sec. 2. Section 524.103, subsections 6, 8, 17, 20, 30, 31,
25 and 33, Code 2003, are amended to read as follows:

26 6. "Articles of incorporation" means the original or
27 restated articles of incorporation and all amendments thereto
28 and includes articles of merger. "Articles of incorporation"
29 also means the original or restated articles of organization
30 and all amendments including articles of merger if a state
31 bank is organized as a limited liability company under this
32 chapter.

33 8. "Bank" means a corporation or limited liability company
34 organized under this chapter or 12 U.S.C. § 21.

35 17. "Control" means when a person, directly or indirectly

1 or acting through or together with one or more persons,
2 satisfies any of the following:

3 a. Owns, controls, or has the power to vote fifty percent
4 or more of any class of voting securities or membership
5 interests of another person.

6 b. Controls, in any manner, the election of a majority of
7 the directors, managers, trustees, or other persons exercising
8 similar functions of another person.

9 c. Has the power to exercise a controlling influence over
10 the management or policies of another person.

11 20. "Executive officer" means a person who participates or
12 has authority to participate, other than in the capacity of a
13 director or manager, in major policymaking functions of a
14 state bank, whether or not the officer has an official title,
15 whether or not such a title designates the officer as an
16 assistant, or whether or not the officer is serving without
17 salary or other compensation. The chief executive officer,
18 chairperson of the board, the president, every vice president,
19 and the cashier of a state bank are deemed to be executive
20 officers, unless such an officer is excluded, by resolution of
21 the board of directors of a state bank or by the bylaws of the
22 state bank, from participation, other than in the capacity of
23 a director, in major policymaking functions of the state bank,
24 and the officer does not actually participate in the major
25 policymaking functions. All officers who serve on a board of
26 directors are deemed to be executive officers, except as
27 provided for in section 524.701, subsection 3.

28 30. "Shareholder" means one who is a holder of record of
29 shares in a state bank. If a state bank is organized as a
30 limited liability company under this chapter, "shareholder"
31 means any member of the limited liability company.

32 31. "Shares" means the units into which the proprietary
33 interests in a state bank are divided, including any
34 membership interests of a state bank organized as a limited
35 liability company under this chapter.

1 33. "State bank" means any bank incorporated pursuant to
2 the provisions of this chapter after January 1, 1970, and any
3 "state bank" or "savings bank" incorporated pursuant to the
4 laws of this state and doing business as such on January 1,
5 1970, or organized as a limited liability company under this
6 chapter.

7 Sec. 3. Section 524.103, Code 2003, is amended by adding
8 the following new subsections:

9 NEW SUBSECTION. 9A. "Board of directors" means the board
10 of directors of a state bank as provided in section 524.601.
11 For state banks organized as a limited liability company under
12 this chapter, "board of directors" means a board of directors
13 or board of managers as designated by the limited liability
14 company in its articles of organization or operating
15 agreement.

16 NEW SUBSECTION. 18A. "Director" means a member of the
17 board of directors and includes a manager of a state bank
18 organized as a limited liability company under this chapter.

19 NEW SUBSECTION. 23A. "Manager" means a person designated
20 by the members to manage a state bank organized as a limited
21 liability company under this chapter as provided in the
22 articles of organization or an operating agreement and may
23 include a member of the board of directors.

24 NEW SUBSECTION. 23B. "Member" means a person with a
25 membership interest in a state bank organized as a limited
26 liability company under this chapter.

27 NEW SUBSECTION. 23C. "Membership interest" means a
28 member's share of the profits and losses, the right to receive
29 distributions of assets, and any right to vote or participate
30 in management, of a state bank organized as a limited
31 liability company under this chapter.

32 Sec. 4. Section 524.301, Code 2003, is amended to read as
33 follows:

34 524.301 INCORPORATORS -- ORGANIZERS.

35 A state bank may be incorporated or organized as a limited

1 liability company under this chapter by one or more
2 individuals eighteen years of age or older, a majority of whom
3 shall be residents of this state and citizens of the United
4 States.

5 Sec. 5. NEW SECTION. 524.302A ARTICLES OF INCORPORATION
6 -- LIMITED LIABILITY COMPANY.

7 1. The articles of incorporation of a state bank organized
8 as a limited liability company under this chapter shall be in
9 the form prescribed by the superintendent, and shall set forth
10 all of the following:

11 a. The name of the state bank, that it is organized for
12 the purpose of conducting the business of banking, and that it
13 is organized under the provisions of this chapter.

14 b. The street address of the limited liability company's
15 initial registered office and the name of its initial
16 registered agent at that office.

17 c. The location of the state bank's proposed principal
18 office of the limited liability company, which may be the same
19 as the registered office, but need not be within this state.

20 d. The duration of the state bank, which shall be
21 perpetual.

22 e. The aggregate number of common and preferred shares
23 which the state bank shall have authority to issue and the par
24 value of such shares. If such shares are to be divided into
25 classes or series, the number of shares of each class or
26 series and a statement of the par value of the shares of each
27 class or series.

28 f. The number of managers constituting the initial board
29 of directors and the names and addresses of the individuals
30 who are to serve as directors until successors are elected and
31 qualify. A statement that the exclusive authority to manage
32 the state bank is vested in a board of directors that is
33 elected or appointed by the members, that operates in
34 substantially the same manner as, and has substantially the
35 same rights, powers, privileges, duties, and responsibilities

1 as, a board of directors of a state bank chartered as a
2 corporation under this chapter.

3 g. A provision that the articles of incorporation,
4 operating agreement, or other organizational documents of the
5 state bank shall not require the consent of any other owner in
6 order for an owner to transfer membership interests in the
7 state bank, including voting rights.

8 2. The articles of incorporation may set forth any or all
9 of the following:

10 a. Provisions not inconsistent with law regarding
11 management of the business and regulation of the affairs of
12 the state bank.

13 b. Any provision required or permitted by this chapter to
14 be set forth in the operating agreement.

15 3. The articles of incorporation need not set forth any of
16 the organizational powers enumerated in this chapter.

17 Sec. 6. Section 524.303, Code 2003, is amended to read as
18 follows:

19 524.303 APPLICATION FOR APPROVAL.

20 The incorporators or organizers shall make an application
21 to the superintendent for approval of a proposed state bank in
22 the manner prescribed by the superintendent and shall deliver
23 to the superintendent, together with such application:

24 1. The articles of incorporation.

25 2. Applicable fees, payable to the secretary of state as
26 specified in section 490.122 or 490A.124, for the filing and
27 recording of the articles of incorporation.

28 Sec. 7. Section 524.304, subsection 1, Code 2003, is
29 amended to read as follows:

30 1. The incorporators or organizers of a state bank shall,
31 within thirty days of the acceptance of the application for
32 processing, publish notice of the proposed incorporation or
33 organization once each week for two successive weeks in a
34 newspaper of general circulation published in the municipal
35 corporation which is proposed as the principal place of

1 business of the state bank, or if there is none, a newspaper
2 of general circulation published in the county, or in a county
3 adjoining the county, in which the proposed state bank is to
4 have its principal place of business. The notice shall set
5 forth all of the following:

6 a. The name of the proposed state bank.

7 b. A statement that it is to be incorporated or organized
8 under this chapter.

9 c. The purpose or purposes of the state bank.

10 d. The names and addresses of the incorporators or
11 organizers and of the members of the initial board of
12 directors or board of directors as they appear, or will
13 appear, in the articles of incorporation.

14 e. The date the application was accepted for processing.

15 f. If the incorporation or organization of the state bank
16 has been approved by the superintendent under section 524.305,
17 subsection 8, the name and address of the bank with which the
18 state bank will have merged, or the assets of which the state
19 bank will have acquired or the condition of which in some
20 other way provided a purpose for the incorporation or
21 organization.

22 Sec. 8. Section 524.305, subsection 1, paragraph d, Code
23 2003, is amended to read as follows:

24 d. The character and fitness of the incorporators or
25 organizers and of the members of the initial board of
26 directors are such as to command the confidence of the
27 community and to warrant the belief that the business of the
28 proposed state bank will be honestly and efficiently
29 conducted.

30 Sec. 9. Section 524.305, subsections 6, 7, and 9, Code
31 2003, are amended to read as follows:

32 6. If the superintendent approves the application, the
33 superintendent shall notify the incorporators or organizers,
34 and such other persons who requested in writing that they be
35 notified, of the approval. If the superintendent disapproves

1 the application, the superintendent shall notify the
2 incorporators or organizers of the action and the reason for
3 the decision.

4 7. The actions of the superintendent shall be subject to
5 judicial review in accordance with chapter 17A. The court may
6 award damages to the incorporators or organizers if it finds
7 that review is sought frivolously or in bad faith.

8 9. As a condition of receiving the decision of the
9 superintendent with respect to the application the
10 incorporators or organizers shall reimburse the superintendent
11 for all expenses incurred by the superintendent in connection
12 with the application.

13 Sec. 10. Section 524.306, Code 2003, is amended to read as
14 follows:

15 524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

16 1. Unless a delayed effective date or time is specified,
17 the corporate or organizational existence of a state bank
18 begins when the articles of incorporation, with the
19 superintendent's approval indicated on the articles of
20 incorporation, are filed with the secretary of state. The
21 secretary of state shall record the articles of incorporation
22 and forward a copy of them to the county recorder of the
23 county in which the state bank is to have its principal place
24 of business.

25 2. The secretary of state's acknowledgment of filing of
26 the articles of incorporation is conclusive proof that the
27 incorporators or organizers satisfied all conditions precedent
28 to incorporation or organization, except in a proceeding
29 instituted by the superintendent to cancel or revoke the
30 incorporation or involuntarily dissolve the corporation or
31 organization.

32 Sec. 11. Section 524.307, Code 2003, is amended to read as
33 follows:

34 524.307 INITIAL ORGANIZATION OF STATE BANK.

35 Upon incorporation, or organization as a limited liability

1 company, of the state bank, the initial board of directors
2 shall hold an organizational meeting within this state, at the
3 call of a majority of the directors, to complete the
4 organization of the state bank by electing officers, adopting
5 bylaws, if any are to be adopted, and conducting any other
6 business properly brought before the board at the meeting.

7 Sec. 12. Section 524.308, subsection 2, Code 2003, is
8 amended to read as follows:

9 2. If a state bank transacts any business before receipt
10 of an authorization to do business in violation of subsection
11 1, the directors, managers, and officers who willfully
12 authorized or participated in the action are severally liable
13 for the debts and liabilities of the state bank incurred prior
14 to the receipt of the authorization to do business.

15 Sec. 13. Section 524.310, Code 2003, is amended to read as
16 follows:

17 524.310 NAME OF STATE BANK.

18 1. The name of a state bank originally incorporated or
19 organized after the effective date of this chapter shall
20 include the word "bank" and may include the word "state" or
21 "trust" in its name. A state bank using the word "trust" in
22 its name must be authorized under this chapter to act in a
23 fiduciary capacity.

24 2. The provisions of this section shall not require any
25 state bank, existing and operating on January 1, 1970, to add
26 to, modify or otherwise change its corporate or organizational
27 name, either on January 1, 1970, or upon renewal of its
28 corporate existence pursuant to section 524.314.

29 3. If a state bank existing and operating on January 1,
30 1970, causes its corporate or organizational name to be
31 changed, the name as changed shall comply with subsection 1 of
32 this section.

33 4. a. A person may reserve the exclusive use of a
34 corporate or organizational name for a state bank by
35 delivering an application to the secretary of state for

1 filing. The application must set forth the name and address
2 of the applicant and the name proposed to be reserved. If the
3 secretary of state finds that the corporate or organizational
4 name applied for is available, the secretary of state shall
5 reserve the name for the applicant's exclusive use for a
6 nonrenewable one hundred twenty day period.

7 b. The owner of a reserved corporate or organizational
8 name may transfer the reservation to another person by
9 delivering to the secretary of state a signed notice of the
10 transfer that states the name and address of the transferee.

11 Sec. 14. Section 524.312, subsections 1 and 5, Code 2003,
12 are amended to read as follows:

13 1. A state bank originally incorporated or organized
14 pursuant to this chapter shall have its principal place of
15 business within the city limits of a municipal corporation.
16 The existence of a state bank shall not, however, be affected
17 by the subsequent discontinuance of the municipal corporation.
18 A state bank existing and operating on January 1, 1970, which
19 does not have its principal place of business within the city
20 limits of a municipal corporation, may renew its corporate or
21 organizational existence pursuant to section 524.314 without
22 regard to this section and may also operate as a bank or
23 convert to and operate as a bank office when acquired by or
24 merged into another state bank and approved by the
25 superintendent.

26 5. A state bank approved under the provisions of section
27 524.305, subsection 8, shall not commence its business at any
28 location other than within a municipal corporation or
29 unincorporated area in which was located the principal place
30 of business or an office of the bank the condition of which
31 was the basis for the superintendent authorizing incorporation
32 or organization of the new state bank.

33 Sec. 15. Section 524.313, Code 2003, is amended to read as
34 follows:

35 524.313 BYLAWS.

1 A state bank may adopt bylaws. The power to adopt, amend,
2 or repeal bylaws or adopt new bylaws is vested in the board of
3 directors unless reserved to the shareholders by the articles
4 of incorporation. The bylaws may contain any provisions for
5 the regulation and management of the affairs of the state bank
6 not inconsistent with law or the articles of incorporation.
7 For a state bank organized as a limited liability company
8 under this chapter, "bylaws" means the operating agreement of
9 the state bank.

10 Sec. 16. NEW SECTION. 524.315 STATE BANKS AS LIMITED
11 LIABILITY COMPANIES.

12 1. A state bank organized as a limited liability company
13 under this chapter shall also be subject to chapter 490A, the
14 Iowa limited liability company Act. If a provision of the
15 Iowa limited liability company Act conflicts with a provision
16 of this chapter or any rule of the superintendent adopted
17 pursuant to this chapter, the provisions of this chapter or
18 rule of the superintendent shall control.

19 2. The superintendent shall possess the exclusive
20 authority to regulate a state bank organized as a limited
21 liability company under this chapter.

22 3. The superintendent may adopt rules to ensure that a
23 state bank organized as a limited liability company under this
24 chapter is operating in a safe and sound manner and is subject
25 to the superintendent's authority in the same manner as a
26 state bank organized as a corporation.

27 Sec. 17. Section 524.401, subsections 2, 3, and 4, Code
28 2003, are amended to read as follows:

29 2. The minimum capital structure of a state bank
30 incorporated after July 1, 1995, or organized after July 1,
31 2004, pursuant to the provisions of this chapter shall not be
32 less than the amount required by the federal deposit insurance
33 corporation, or its successor, or a greater amount which the
34 superintendent may deem necessary in view of the deposit
35 potential of the state bank and current banking standards

1 relating to total capital requirements.

2 3. A state bank incorporated on or after July 1, 1995, or
3 organized after July 1, 2004, pursuant to this chapter, prior
4 to receiving authorization to do business from the
5 superintendent, shall establish paid-in surplus and undivided
6 profits as required by the superintendent.

7 4. A state bank originally incorporated or organized
8 pursuant to this chapter shall establish, prior to receiving
9 authorization to do business from the superintendent, paid-in
10 surplus and undivided profits as required by the
11 superintendent.

12 Sec. 18. Section 524.525, Code 2003, is amended to read as
13 follows:

14 524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR
15 ORGANIZATION.

16 1. A subscription for shares entered into before
17 incorporation or organization of the state bank is irrevocable
18 for six months unless the subscription agreement provides a
19 longer or shorter period, or all subscribers agree to
20 revocation.

21 2. The board of directors may determine the payment terms
22 of subscriptions for shares that were entered into before
23 incorporation or organization of the state bank unless the
24 subscription agreement specifies the terms. A call for
25 payment by the board of directors must be uniform so far as
26 practicable as to all shares of the same class or series,
27 unless the subscription agreement specifies otherwise.

28 3. Shares issued pursuant to subscriptions entered into
29 before incorporation or organization of the state bank are
30 fully paid and nonassessable when the state bank receives the
31 consideration specified in the subscription agreement.

32 4. If a subscriber defaults in payment of money or
33 property under a subscription agreement entered into before
34 incorporation or organization of the state bank, the state
35 bank may do either of the following:

1 a. Collect the amount owed as any other debt.

2 b. Unless the subscription agreement provides otherwise,
3 the state bank may rescind the agreement and may sell the
4 shares if the debt remains unpaid more than twenty days after
5 the state bank sends written demand for payment to the
6 subscriber.

7 Sec. 19. Section 524.528, subsection 2, paragraph c, Code
8 2003, is amended to read as follows:

9 c. There is no preemptive right with respect to any of the
10 following:

11 (1) Shares issued as compensation to directors, managers,
12 officers, agents, or employees of the state bank, its
13 subsidiaries, or its affiliates.

14 (2) Shares issued to satisfy conversion or option rights
15 created to provide compensation to directors, managers,
16 officers, agents, or employees of the state bank, its
17 subsidiaries, or its affiliates.

18 (3) Shares authorized in articles of incorporation that
19 are issued within six months from the effective date of
20 incorporation or organization.

21 Sec. 20. Section 524.801, subsection 1, Code 2003, is
22 amended to read as follows:

23 1. To sue and be sued, complain and defend, in its
24 corporate or organizational name.

25 Sec. 21. Section 524.801, unnumbered paragraph 2, Code
26 2003, is amended to read as follows:

27 The powers granted in this section shall not be construed
28 as limiting or enlarging any grant of authority made elsewhere
29 in this chapter, or as a limitation on the purposes for which
30 a state bank may be incorporated or organized.

31 Sec. 22. Section 524.1301, Code 2003, is amended to read
32 as follows:

33 524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR
34 INITIAL DIRECTORS.

35 A majority of the incorporators, organizers, or initial

1 directors of a state bank that has not issued shares or has
2 not commenced business may dissolve the state bank by
3 delivering articles of dissolution to the superintendent,
4 together with the applicable filing and recording fees, for
5 filing with the secretary of state that set forth all of the
6 following:

- 7 1. The name of the state bank.
- 8 2. The date of its incorporation or organization.
- 9 3. Either of the following:
 - 10 a. That the state bank has not issued any shares.
 - 11 b. That the state bank has not commenced business.
- 12 4. That no debt of the state bank remains unpaid.
- 13 5. If shares were issued, that the net assets of the state
14 bank remaining after the payment of all necessary expenses
15 have been distributed to the shareholders.
- 16 6. That a majority of the incorporators, organizers, or
17 initial directors authorized the dissolution.

18 Sec. 23. Section 524.1302, Code 2003, is amended to read
19 as follows:

20 524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF
21 BUSINESS.

22 Prior to the issuance of an authorization to do business,
23 the superintendent may cause the dissolution of a state bank
24 if there exists any reason why it should not have been
25 incorporated or organized under this chapter or if an
26 authorization to do business has not been issued within one
27 year after the date of its incorporation or organization, or
28 such longer time as the superintendent may allow for
29 satisfaction of conditions precedent to its issuance. After
30 giving the state bank adequate notice and an opportunity for
31 hearing, the superintendent shall certify the applicable facts
32 by the filing of a statement with the secretary of state, who
33 shall thereafter issue a certificate of dissolution. Upon the
34 issuance of such certificate of dissolution by the secretary
35 of state, the corporate or organizational existence of the

1 state bank shall cease.

2 Sec. 24. Section 524.1309, Code 2003, is amended to read
3 as follows:

4 524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

5 In lieu of the dissolution procedure prescribed in sections
6 524.1303 to 524.1306, a state bank may cease to carry on the
7 business of banking and, after compliance with this section,
8 continue as a corporation subject to chapter 490; or if the
9 state bank is organized as a limited liability company under
10 this chapter, continue as a limited liability company subject
11 to chapter 490A.

12 1. A state bank ~~which~~ that has commenced business may
13 propose to voluntarily cease to carry on the business of
14 banking and become a corporation subject to chapter 490, or a
15 limited liability company subject to chapter 490A, upon the
16 affirmative vote of the holders of at least a majority of the
17 shares entitled to vote on such proposal, adopting a plan
18 involving both a provision for acquisition of its assets and
19 assumption of its liabilities by another state bank, national
20 bank, or other financial institution insured by the federal
21 deposit insurance corporation, and a provision for continuance
22 of its business if acquisition of its assets and assumption of
23 its liabilities is not effected, or any other plan providing
24 for the cessation of banking business and the payment of its
25 liabilities.

26 2. The application to the superintendent for approval of a
27 plan described in subsection 1 ~~of this section~~ shall be
28 treated by the superintendent in the same manner as an
29 application for approval of a plan of dissolution under
30 ~~subsection 2 of~~ section 524.1303, subsection 2, and shall be
31 subject to ~~subsection 3 of~~ section 524.1303, subsection 3.

32 3. Immediately upon adoption and approval of a plan to
33 voluntarily cease to carry on the business of banking and
34 become a corporation subject to chapter 490, or a limited
35 liability company subject to chapter 490A, the state bank

1 shall deliver to the superintendent a plan to cease the
2 business of banking and become a corporation subject to
3 chapter 490, or a limited liability company subject to chapter
4 490A, which shall be signed by two of its duly authorized
5 officers and shall contain the name of the state bank, the
6 post office address of its principal place of business, the
7 name and address of its officers and directors, the number of
8 shares entitled to vote on the plan and the number of shares
9 voted for or against the plan, respectively, the nature of the
10 business to be conducted by the corporation under chapter 490,
11 or by the limited liability company subject to chapter 490A,
12 and the general nature of the assets to be held by the
13 corporation or company.

14 4. Upon approval of the plan by the superintendent, the
15 state bank shall immediately surrender to the superintendent
16 its authorization to do business as a bank and shall cease to
17 accept deposits and carry on the banking business except
18 insofar as may be necessary for it to complete the settlement
19 of its affairs as a state bank in accordance with subsection
20 5.

21 5. The board of directors has full power to complete the
22 settlement of the affairs of the state bank. Within thirty
23 days after approval by the superintendent of the plan to cease
24 the business of banking and become a corporation subject to
25 chapter 490, or a limited liability company subject to chapter
26 490A, the state bank shall give notice of its intent to
27 persons identified in section 524.1305, subsection 4, in the
28 manner provided for in that subsection. In completing the
29 settlement of its affairs as a state bank the state bank shall
30 also follow the procedure prescribed in section 524.1305,
31 subsections 4, 5, and 6.

32 6. Upon completion of all the requirements of this
33 section, the state bank shall deliver to the superintendent
34 articles of intent to be subject to chapter 490 or 490A,
35 together with the applicable filing and recording fees, which

1 shall set forth that the state bank has complied with this
2 section, that it has ceased to carry on the business of
3 banking, and the information required by section 490.202
4 relative to the contents of articles of incorporation under
5 chapter 490, or article of organization under chapter 490A.
6 If the superintendent finds that the state bank has complied
7 with this section and that the articles of intent to be
8 subject to chapter 490 or 490A satisfy the requirements of
9 this section, the superintendent shall deliver them to the
10 secretary of state for filing and recording in the secretary
11 of state's office, and they shall be filed and recorded in the
12 office of the county recorder.

13 7. Upon the filing of the articles of intent to be subject
14 to chapter 490 or 490A, the state bank shall cease to be a
15 state bank subject to this chapter, and shall cease to have
16 the powers of a state bank subject to this chapter and shall
17 become a corporation subject to chapter 490 or a limited
18 liability company subject to chapter 490A. The secretary of
19 state shall issue a certificate as to the filing of the
20 articles of intent to be subject to chapter 490 or 490A, and
21 send the certificate to the corporation or limited liability
22 company or its representative. The articles of intent to be
23 subject to chapter 490 or 490A shall be the articles of
24 incorporation of the corporation or a limited liability
25 company. The provisions of chapter 490 or 490A becoming
26 applicable to a corporation or limited liability company
27 formerly doing business as a state bank shall not affect any
28 right accrued or established, or liability or penalty incurred
29 under this chapter prior to the filing with the secretary of
30 state of the articles of intent to be subject to chapter 490
31 or 490A.

32 8. A shareholder of a state bank who objects to adoption
33 by the state bank of a plan to cease to carry on the business
34 of banking and to continue as a corporation subject to chapter
35 490, or a limited liability company subject to chapter 490A,

1 is entitled to appraisal rights provided for in chapter 490,
2 division XIII, or in chapter 490A, subchapter VII.

3 9. A state bank, at any time prior to the approval of the
4 articles of intent to become subject to chapter 490 or 490A,
5 may revoke the proceedings in the manner prescribed by section
6 524.1306.

7 Sec. 25. Section 524.1405, subsection 2, paragraph f, Code
8 2003, is amended to read as follows:

9 f. The shares of each party to the merger that are to be
10 converted into shares, obligations, or other securities of the
11 surviving party or any other corporation or limited liability
12 company or into cash or other property are converted, and the
13 former holders of the shares are entitled only to the rights
14 provided in the articles of merger or to their rights under
15 section 524.1406.

16 Sec. 26. Section 524.1408, Code 2003, is amended to read
17 as follows:

18 524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY
19 COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

20 A state bank owning at least ninety percent of the
21 outstanding shares, of each class, of another corporation or
22 limited liability company which it is authorized to own under
23 this chapter, may merge the other corporation or limited
24 liability company into itself without approval by a vote of
25 the shareholders of either the state bank or the subsidiary
26 corporation or limited liability company. The board of
27 directors of the state bank shall approve a plan of merger,
28 mail to shareholders of record of the subsidiary corporation
29 or holders of membership interests in the subsidiary limited
30 company, and prepare and execute articles of merger in the
31 manner provided for in section 490.1105. The articles of
32 merger, together with the applicable filing and recording
33 fees, shall be delivered to the superintendent who shall, if
34 the superintendent approves of the proposed merger and if the
35 superintendent finds the articles of merger satisfy the

1 requirements of this section, deliver them to the secretary of
2 state for filing and recording in the secretary of state's
3 office, and they shall be filed in the office of the county
4 recorder. The secretary of state upon filing the articles of
5 merger shall issue a certificate of merger and send the
6 certificate to the state bank and a copy of it to the
7 superintendent.

8 Sec. 27. Section 524.1802, subsection 1, Code 2003, is
9 amended by adding the following new paragraph:

10 NEW PARAGRAPH. gg. "Incorporated in any state" means a
11 limited liability company organized as a state bank under this
12 chapter and a limited liability company organized as a state
13 bank under the laws of any state as defined in 12 U.S.C. §
14 1813(a)(3).

15 Sec. 28. Section 524.2001, Code 2003, is amended to read
16 as follows:

17 524.2001 APPLICABILITY OF OTHER CHAPTERS.

18 Chapters 490, 490A, 491, 492, and 493 do not apply to banks
19 except as provided by this chapter.

20 EXPLANATION

21 This bill permits a state bank to be organized as a limited
22 liability company.

23 The bill provides for the content of the articles of
24 incorporation of a state bank as a limited liability company.
25 The definitions of "articles of incorporation", "shareholder",
26 "shares", and "bylaws" are amended to include the organization
27 of and membership interests in limited liability companies.
28 New definitions are provided for "board of directors",
29 "director", "manager", "member", and "membership interest" to
30 reflect the application to state banks as limited liability
31 companies. A state bank organized as a limited liability
32 company must also comply with Code chapter 490A, except where
33 conflicts occur, Code chapter 524 controls. The
34 superintendent of banking may adopt rules to regulate state
35 banks that are organized as limited liability companies.

1 The bill makes numerous corresponding terminology changes
2 throughout Code chapter 524, and also to Code section 422.11
3 regarding the franchise tax credit, to reflect that a state
4 bank may be either a corporation or a limited liability
5 company.

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