

House Study Bill 725

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON MERTZ)

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

A BILL FOR

1 An Act relating to the management of cooperative associations.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 6447HC 82
4 da/nh/5

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1 1 Section 1. NEW SECTION. 499.36A STANDARDS OF CONDUCT FOR
1 2 DIRECTORS.
1 3 1. A director shall discharge the duties of the position
1 4 of director in good faith, in a manner the director reasonably
1 5 believes to be in the best interests of the association, and
1 6 with the care an ordinarily prudent person in a like position
1 7 would exercise under similar circumstances. A person who so
1 8 performs those duties is not liable by reason of being or
1 9 having been a director of the cooperative.
1 10 2. a. A director is entitled to rely on information,
1 11 opinions, reports, or statements, including financial
1 12 statements and other financial data, in each case prepared or
1 13 presented by any of the following:
1 14 (1) One or more officers or employees of the association
1 15 whom the director reasonably believes to be reliable and
1 16 competent in the matters presented.
1 17 (2) Legal counsel, public accountants, or other persons as
1 18 to matters that the director reasonably believes are within
1 19 the person's professional or expert competence.
1 20 (3) A committee of the board upon which the director does
1 21 not serve, duly established by the board as to matters within
1 22 its designated authority, if the director reasonably believes
1 23 the committee to merit confidence.
1 24 b. Paragraph "a" does not apply to a director who has
1 25 knowledge concerning the matter in question that makes the
1 26 reliance otherwise permitted by that paragraph unwarranted.
1 27 3. A director who is present at a meeting of the board
1 28 when an action is approved by the affirmative vote of a
1 29 majority of the directors present is presumed to have assented
1 30 to the action approved, unless any of the following applies:
1 31 a. The director objects at the beginning of the meeting to
1 32 the transaction of business because the meeting is not
1 33 lawfully called or convened, and does not participate in the
1 34 meeting after the objection, in which case the director is not
1 35 considered to be present at the meeting for any purpose of
2 1 this chapter.
2 2 b. The director votes against the action at the meeting.
2 3 c. The director is prohibited by a conflict of interest
2 4 from voting on the action.
2 5 4. In discharging the duties of a director, the director
2 6 may, in addition to consideration of the effects of any action
2 7 on the association and its members, consider any or all of the
2 8 following community interest factors:
2 9 a. The effects of the action on the association's
2 10 employees, suppliers, creditors, and customers.
2 11 b. The interests of and effects on communities and the
2 12 cooperative system in which the association and its members
2 13 operate.
2 14 c. The long-term as well as short-term interests of the
2 15 association and its members, including the possibility that
2 16 these interests may be best served by the continued
2 17 independence of the association.
2 18 Sec. 2. NEW SECTION. 499.37A STANDARDS OF CONDUCT FOR
2 19 OFFICERS.

2 20 1. An officer, when performing in such capacity, shall act
2 21 in conformity with all of the following:

2 22 a. In good faith.

2 23 b. With the care that a person in a like position would
2 24 reasonably exercise under similar circumstances.

2 25 c. In a manner the officer reasonably believes to be in
2 26 the best interests of the association.

2 27 2. In discharging the officer's duties, an officer who
2 28 does not have knowledge that makes such reliance unwarranted
2 29 is entitled to rely on any of the following:

2 30 a. The performance of properly delegated responsibilities
2 31 by one or more employees of the association whom the officer
2 32 reasonably believes to be reliable and competent in performing
2 33 the responsibilities delegated.

2 34 b. Information, opinions, reports, or statements,
2 35 including financial statements and other financial data,
3 1 prepared or presented by one or more employees of the
3 2 association whom the officer reasonably believes to be
3 3 reliable and competent in the matters presented.

3 4 c. Legal counsel, public accountants, or other persons
3 5 retained by the association as to matters involving skills or
3 6 expertise the officer reasonably believes are matters within
3 7 the particular person's professional or expert competence or
3 8 as to which the particular person merits confidence.

3 9 3. An officer shall not be liable as an officer to the
3 10 association or its members for any decision to take or not to
3 11 take action, or any failure to take any action, if the duties
3 12 of the officer are performed in compliance with this section.
3 13 Whether an officer who does not comply with this section is
3 14 liable depends in such instance on applicable law, including
3 15 those principles of section 499.36A that have relevance.

3 16 Sec. 3. Section 499.47B, subsections 1 and 3, Code 2007,
3 17 are amended to read as follows:

3 18 1. The board of directors shall adopt a resolution
3 19 recommending the sale, lease, exchange, or other disposition
3 20 and directing the submission thereof to a vote at a meeting of
3 21 the membership, which may either be an annual or a special
3 22 meeting. The board of directors may condition its

3 23 recommendation and submission of the sale, lease, exchange, or
3 24 other disposition to the members for approval under this

3 25 section on any basis.

3 26 3. At the meeting the membership may authorize the sale,
3 27 lease, exchange, or other disposition and may fix, or may
3 28 authorize the board of directors to fix, any or all of the
3 29 terms and conditions thereof and the consideration to be
3 30 received by the cooperative association. Such authorization
3 31 shall for the sale, lease, exchange, or other disposition
3 32 shall be approved by the members as follows:

3 33 a. Except as provided in paragraph "b", the sale, lease,
3 34 exchange, or other disposition must be approved if by a
3 35 two-thirds vote of the members vote affirmatively on a ballot
4 1 in which a majority of all voting members participate.

4 2 b. (1) If the cooperative association's articles of
4 3 incorporation require approval by more than two-thirds of its
4 4 members on a ballot in which a majority of all voting members
4 5 participate, the sale, lease, exchange, or other disposition
4 6 must be approved by the greater number as provided in the
4 7 articles of incorporation.

4 8 (2) If the board of directors adopts additional conditions
4 9 for the approval of the sale, lease, exchange, or other
4 10 disposition as provided in subsection 1, the additional
4 11 conditions must be satisfied in order for the sale, lease,
4 12 exchange, or other disposition to be approved.

4 13 Sec. 4. NEW SECTION. 499.47D CONSIDERATION OF
4 14 ACQUISITION PROPOSALS == COMMUNITY INTERESTS.

4 15 1. A director, in determining what is in the best interest
4 16 of the association when considering a tender offer or proposal
4 17 of acquisition, proposal of merger, proposal of consolidation,
4 18 or similar proposal, may, in addition to consideration of the
4 19 effects of any action on the association and its members,
4 20 consider any or all of the community interest factors
4 21 described in section 499.36A.

4 22 2. If on the basis of the community interest factors
4 23 described in section 499.36A, the board of directors
4 24 determines that a tender offer or proposal to acquire, merge,
4 25 or consolidate the association or any similar proposal is not
4 26 in the best interests of the association, it may reject the
4 27 tender offer or proposal. If the board of directors rejects
4 28 any such tender offer or proposal, the board of directors has
4 29 no obligation to facilitate, to remove any barriers to, or to
4 30 refrain from impeding the tender offer or proposal.

4 31 Consideration of any or all of the community interest factors
4 32 is not a violation of the business judgment rule or of any
4 33 duty of the director to the members, or a group of members,
4 34 even if the director reasonably determines that a community
4 35 interest factor or factors outweigh the financial or other
5 1 benefits to the association or a member or group of members.

5 2 Sec. 5. Section 499.64, Code 2007, is amended to read as
5 3 follows:

5 4 499.64 VOTE OF MEMBERS.

5 5 1. The board of directors of a cooperative association,
5 6 upon ~~approving recommending~~ a plan of merger or consolidation
5 7 ~~be approved by the members~~, shall, by motion or resolution,
5 8 direct that the plan be submitted to a vote at a meeting of
5 9 members, which may be either an annual or special meeting.
5 10 ~~The board of directors may condition its recommendation and~~
5 11 ~~submission of a plan of merger or consolidation to the members~~
5 12 ~~for approval under this section on any basis.~~ Written notice
5 13 shall be given not less than twenty days prior to the meeting,
5 14 either personally or by mail to each voting member and
5 15 shareholder of record. The notice shall state the time,
5 16 place, and purpose of the meeting, and a summary of the plan
5 17 of merger or consolidation shall be included in or enclosed
5 18 with the notice.

5 19 2. At the meeting, a ballot of the members who are
5 20 entitled to vote in the affairs of the association shall be
5 21 taken on the proposed plan of merger or consolidation. The
5 22 plan of merger or consolidation shall be approved ~~if as~~
5 23 follows:

5 24 a. ~~Except as provided in paragraph "b", the proposed plan~~
5 25 ~~of merger or consolidation must be approved by a two-thirds~~
5 26 ~~vote of the members vote affirmatively~~ on a ballot in which a
5 27 majority of all voting members participate.

5 28 b. (1) ~~If the cooperative association's articles of~~
5 29 ~~incorporation require approval by more than two-thirds of its~~
5 30 ~~members on a ballot in which a majority of all voting members~~
5 31 ~~participate, the proposed plan of merger or consolidation must~~
5 32 ~~be approved by the greater number as provided in the articles~~
5 33 ~~of incorporation.~~

5 34 (2) ~~If the board of directors adopts additional conditions~~
5 35 ~~for the approval of the plan of merger or consolidation as~~
6 1 ~~provided in subsection 1, the additional conditions must be~~
6 2 ~~satisfied in order for the plan of merger or consolidation to~~
6 3 ~~be approved.~~

6 4 3. ~~Voting by members~~ may be by mail ballot notwithstanding
6 5 any contrary provision in the articles of incorporation or
6 6 bylaws.

6 7 EXPLANATION

6 8 This bill amends a number of provisions related to the
6 9 management of a cooperative association (association).

6 10 STANDARDS FOR CONDUCT BY BOARD MEMBERS. The bill provides
6 11 for the standard of conduct for an association's board of
6 12 directors. Generally, the standard is one of good faith and
6 13 reasonableness and allows a director to base a decision upon
6 14 information normally considered reliable (competent persons,
6 15 professionals, or designated committees). The bill
6 16 establishes procedures for a director's approval of board
6 17 decisions. It also provides that in making a decision, the
6 18 director may consider so-called community interest factors
6 19 which include: (1) the effects of the action on the
6 20 association's employees, suppliers, creditors, and customers,
6 21 (2) the interests of and effects on communities and the
6 22 cooperative system in which the cooperative and its members
6 23 operate, and (3) the long-term as well as short-term interests
6 24 of the association and its members.

6 25 STANDARD OF CONDUCT BY OFFICERS. The bill provides a
6 26 standard of conduct for an association's officers. Generally,
6 27 the standard is one of good faith using ordinary care and in a
6 28 manner that the officer reasonably believes is in the
6 29 association's best interest. The officer is entitled to rely
6 30 upon persons who the officer has reason to believe are
6 31 reliable and competent, information prepared by such persons,
6 32 and professionals. The bill provides that an officer is not
6 33 liable for actions which are performed on the basis of these
6 34 standards of care.

6 35 SALE OF OR OTHER DISPOSITION OF ASSETS OTHER THAN IN THE
7 1 REGULAR COURSE OF BUSINESS. The bill amends provisions which
7 2 allow a board of directors to adopt a resolution for vote by
7 3 the association's membership for the sale, lease, exchange, or
7 4 other disposition of all or substantially all of the
7 5 association's assets. The bill allows the board to condition
7 6 its recommendation upon any basis. The bill also accounts for

7 7 the voting on the measure by the members. Under current law
7 8 the members must approve the disposition by a two-thirds
7 9 majority. The bill provides that the association's articles
7 10 of incorporation may require the vote be by a greater than
7 11 two-thirds majority.

7 12 CONSIDERATION OF ACQUISITION PROPOSALS. The bill provides
7 13 that the board of directors when determining whether to
7 14 recommend an acquisition proposal, including a merger or
7 15 consolidation proposal, may consider community interest
7 16 factors, and may reject the proposal if the board determines
7 17 that it is not in the best interests of the association.

7 18 The bill provides that the board of directors may condition
7 19 its recommendation to approve a merger or consolidation to the
7 20 members on any basis. Generally, the members must approve the
7 21 board's recommendation by a two-thirds majority vote in the
7 22 same way in which a proposal to dispose of all of the
7 23 association's assets must be approved by a super-majority.
7 24 The bill also provides that the association's articles of
7 25 incorporation may require the vote be by a greater than
7 26 two-thirds majority.

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