

House Study Bill 76

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

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

A BILL FOR

1 An Act relating to business corporations, by providing for
2 information required to be filed with the secretary of state
3 and providing for shareholder voting.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1075HC 82
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1 1 DIVISION I
1 2 GENERAL REVISIONS
1 3 Section 1. Section 490.120, Code 2007, is amended by
1 4 adding the following new subsection:
1 5 NEW SUBSECTION. 12. Whenever a provision of this chapter
1 6 permits any of the terms of a plan or a filed document to be
1 7 dependent on facts objectively ascertainable outside of the
1 8 plan or filed document, all of the following provisions apply:
1 9 a. The manner in which the facts will operate upon the
1 10 terms of the plan or filed document shall be set forth in the
1 11 plan or filed document.
1 12 b. The facts may include, but are not limited to any of
1 13 the following:
1 14 (1) Any of the following that is available in a nationally
1 15 recognized news or information medium either in print or
1 16 electronically: statistical or market indices, market prices
1 17 of any security or group of securities, interest rates,
1 18 currency exchange rates, or similar economic or financial
1 19 data.
1 20 (2) A determination or action by any person or body,
1 21 including the corporation or any other party to a plan or
1 22 filed document.
1 23 (3) The terms of, or actions taken under, an agreement to
1 24 which the corporation is a party, or any other agreement or
1 25 document.
1 26 c. As used in this subsection:
1 27 (1) "Filed document" means a document filed with the
1 28 secretary of state under any provision of this chapter except
1 29 division XV or section 490.1622.
1 30 (2) "Plan" means a plan of merger or share exchange.
1 31 d. The following provisions of a plan or filed document
1 32 may not be made dependent on facts outside the plan or filed
1 33 document:
1 34 (1) The name and address of any person required in a filed
1 35 document.
2 1 (2) The registered office of any entity required in a
2 2 filed document.
2 3 (3) The registered agent of any entity required in a filed
2 4 document.
2 5 (4) The number of authorized shares and designation of
2 6 each class or series of shares.
2 7 (5) The effective date of a filed document.
2 8 (6) Any required statement in a filed document of the date
2 9 on which the underlying transaction was approved or the manner
2 10 in which that approval was given.
2 11 e. If a provision of a filed document is made dependent on
2 12 a fact ascertainable outside of the filed document, and that
2 13 fact is not ascertainable by reference to a source described
2 14 in paragraph "b", subparagraph (1), or a document that is a
2 15 matter of public record, or the affected shareholders have not
2 16 received notice of the fact from the corporation, then the
2 17 corporation shall file with the secretary of state articles of

2 18 amendment setting forth the fact promptly after the time when
2 19 the fact referred to is first ascertainable or thereafter
2 20 changes. Articles of amendment under this paragraph are
2 21 deemed to be authorized by the authorization of the original
2 22 filed document to which they relate and may be filed by the
2 23 corporation without further action by the board of directors
2 24 or the shareholders.

2 25 Sec. 2. Section 490.140, Code 2007, is amended by adding
2 26 the following new subsection:

2 27 NEW SUBSECTION. 11A. The phrase "facts objectively
2 28 ascertainable" outside of a filed document or plan is defined
2 29 in section 490.120, subsection 12.

2 30 Sec. 3. Section 490.202, Code 2007, is amended by adding
2 31 the following new subsection:

2 32 NEW SUBSECTION. 4. Provisions of the articles of
2 33 incorporation may be made dependent upon facts objectively
2 34 ascertainable outside the articles of incorporation in
2 35 accordance with section 490.120.

3 1 Sec. 4. Section 490.601, Code 2007, is amended to read as
3 2 follows:

3 3 490.601 AUTHORIZED SHARES.

3 4 1. The articles of incorporation must ~~prescribe the set~~
3 5 ~~forth any classes of shares and series of shares within a~~
3 6 ~~class, and the number of shares of each class and series, that~~
3 7 the corporation is authorized to issue. If more than one
3 8 class ~~or series~~ of shares is authorized, the articles of
3 9 incorporation must prescribe a distinguishing designation for
3 10 each class, ~~or series~~ and ~~must describe~~, prior to the issuance
3 11 of shares of a class ~~or series~~, the ~~terms, including the~~
3 12 ~~preferences, rights, and limitations, and relative rights of~~
3 13 ~~that class must be described in the articles of incorporation~~
3 14 ~~of that class or series. All Except to the extent varied as~~
3 15 ~~permitted by this section, all shares of a class or series~~
3 16 ~~must have terms, including preferences, rights, and~~
3 17 ~~limitations, and relative rights that are identical with those~~
3 18 ~~of other shares of the same class except to the extent~~
3 19 ~~otherwise permitted by section 490.602 or series.~~

3 20 2. The articles of incorporation must authorize ~~both all~~
3 21 of the following:

3 22 a. One or more classes ~~or series~~ of shares that together
3 23 have unlimited voting rights.

3 24 b. One or more classes ~~or series~~ of shares, which may be
3 25 the same class or classes as those with voting rights, that
3 26 together are entitled to receive the net assets of the
3 27 corporation upon dissolution.

3 28 3. The articles of incorporation may authorize one or more
3 29 classes ~~or series~~ of shares that have any of the following
3 30 qualities:

3 31 a. Have special, conditional, or limited voting rights, or
3 32 no right to vote, except to the extent ~~prohibited otherwise~~
3 33 ~~provided by this chapter.~~

3 34 b. Are redeemable or convertible as specified in the
3 35 articles of incorporation in any of the following ways:

4 1 (1) At the option of the corporation, the ~~shareholders~~
4 2 ~~shareholder~~, or another person or upon the occurrence of a
4 3 ~~designated specified~~ event.

4 4 (2) For cash, indebtedness, securities, or other property.

4 5 (3) ~~In a designated amount or in an amount At prices and~~
4 6 ~~in amounts specified, or determined in accordance with a~~
4 7 ~~designated formula or by reference to extrinsic data or~~
4 8 ~~events.~~

4 9 c. Entitle the holders to distributions calculated in any
4 10 manner, including dividends that may be cumulative,
4 11 noncumulative, or partially cumulative.

4 12 d. Have preference over any other class ~~or series~~ of
4 13 shares with respect to distributions, including ~~dividends and~~
4 14 distributions upon the dissolution of the corporation.

4 15 4. ~~The terms of shares may be made dependent upon facts~~
4 16 ~~objectively ascertainable outside the articles of~~
4 17 ~~incorporation in accordance with section 490.120, subsection~~
4 18 ~~12.~~

4 19 5. ~~The terms of shares may vary among holders of the same~~
4 20 ~~class or series so long as such variations are expressly set~~
4 21 ~~forth in the articles of incorporation.~~

4 22 6. The description of the ~~designations~~, preferences,
4 23 ~~rights, and limitations, and relative rights~~ of share classes
4 24 ~~or series of shares~~ in subsection 3 is not exhaustive.

4 25 Sec. 5. Section 490.602, Code 2007, is amended by striking
4 26 the section and inserting in lieu thereof the following:

4 27 490.602 TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF
4 28 DIRECTORS.

4 29 1. If the articles of incorporation so provide, the board
4 30 of directors is authorized, without shareholder approval, to
4 31 do any of the following:
4 32 a. Classify any unissued shares into one or more series
4 33 within a class.
4 34 b. Reclassify any unissued shares of any class into one or
4 35 more classes or into one or more series within one or more
5 1 classes.
5 2 c. Reclassify any unissued shares of any series of any
5 3 class into one or more classes or into one or more series
5 4 within a class.
5 5 2. If the board of directors acts pursuant to subsection
5 6 1, it must determine the terms, including the preferences,
5 7 rights, and limitations, to the same extent permitted under
5 8 section 490.601, of any of the following:
5 9 a. Any class of shares before the issuance of any shares
5 10 of that class.
5 11 b. Any series within a class before the issuance of any
5 12 shares of that series.
5 13 3. Before issuing any shares of a class or series created
5 14 under this section, the corporation must deliver to the
5 15 secretary of state for filing articles of amendment setting
5 16 forth the terms determined under subsection 1.
5 17 Sec. 6. Section 490.624, Code 2007, is amended to read as
5 18 follows:
5 19 490.624 SHARE OPTIONS.
5 20 1. A corporation may issue rights, options, or warrants
5 21 for the purchase of shares or other securities of the
5 22 corporation. The board of directors shall determine (i) the
5 23 terms upon which the rights, options, or warrants are issued,
~~5 24 their form and content, and the consideration for which the~~
~~5 25 shares are to be issued, and (ii) the terms, including the~~
~~5 26 consideration for which the shares or other securities are to~~
~~5 27 be issued. The authorization by the board of directors for~~
~~5 28 the corporation to issue such rights, options, or warrants~~
~~5 29 constitutes authorization of the issuance of the shares or~~
~~5 30 other securities for which the rights, options, or warrants~~
~~5 31 are exercisable.~~
5 32 2. The terms and conditions of such rights, options, or
5 33 warrants, including those outstanding on the effective date of
5 34 this section, may include, without limitation, restrictions,
5 35 or conditions that do any of the following:
6 1 a. Preclude or limit the exercise, transfer, or receipt of
6 2 such rights, options, or warrants by any person or persons
6 3 owning or offering to acquire a specified number or percentage
6 4 of the outstanding shares or other securities of the
6 5 corporation or by any transferee or transferees of any such
6 6 person or persons.
6 7 b. Invalidate or void such rights, options, or warrants
6 8 held by any such person or persons or any such transferee or
6 9 transferees.
6 10 Sec. 7. Section 490.1005, subsection 8, Code 2007, is
6 11 amended to read as follows:
6 12 8. To make any change expressly permitted by section
6 13 490.602, subsection ~~4~~ 1 or 2, to be made without shareholder
6 14 approval.
6 15 Sec. 8. Section 490.1006, Code 2007, is amended to read as
6 16 follows:
6 17 490.1006 ARTICLES OF AMENDMENT.
6 18 After an amendment to the articles of incorporation has
6 19 been adopted and approved in the manner required by this
6 20 chapter and by the articles of incorporation, the corporation
6 21 shall deliver to the secretary of state, for filing, articles
6 22 of amendment, which shall set forth all of the following:
6 23 1. The name of the corporation.
6 24 2. The text of each amendment adopted, or the information
~~6 25 required by section 490.120, subsection 12, paragraph "e".~~
6 26 3. If an amendment provides for an exchange,
6 27 reclassification, or cancellation of issued shares, provisions
6 28 for implementing the amendment, if not contained in the
6 29 amendment itself, which may be made dependent upon facts
~~6 30 objectively ascertainable outside the articles of amendment in~~
~~6 31 accordance with section 490.120, subsection 12.~~
6 32 4. The date of each amendment's adoption.
6 33 5. ~~If an amendment was adopted by the incorporators or~~
~~6 34 board of directors without shareholder approval, a statement~~
~~6 35 that the amendment was duly approved by the incorporators or~~
7 1 ~~by the board of directors, as the case may be, and that~~
7 2 ~~shareholder approval was not required.:~~
7 3 6. a. If an amendment required Required approval by the
7 4 shareholders, a statement that the amendment was duly approved

7 5 by the shareholders in the manner required by this chapter and
7 6 by the articles of incorporation.

7 7 b. Is being filed pursuant to section 490.120, subsection
7 8 12, a statement to that effect.

7 9 Sec. 9. Section 490.1102, subsection 4, Code 2007, is
7 10 amended to read as follows:

7 11 4. ~~The terms described in subsection 3, paragraphs "b" and~~
7 12 ~~"c", of a plan of merger may be made dependent on facts~~
7 13 ~~objectively ascertainable outside the plan of merger, provided~~
7 14 ~~that those facts are objectively ascertainable in accordance~~
7 15 ~~with section 490.120, subsection 12. The term "facts"~~
7 16 ~~includes, but is not limited to, the occurrence of any event,~~
7 17 ~~including a determination or action by any person or body,~~
7 18 ~~including the corporation.~~

7 19 Sec. 10. Section 490.1103, subsection 4, Code 2007, is
7 20 amended to read as follows:

7 21 4. ~~The terms described in subsection 3, paragraphs "b" and~~
7 22 ~~"c", of a share exchange may be made dependent on facts~~
7 23 ~~objectively ascertainable outside the plan of share exchange,~~
7 24 ~~provided that those facts are objectively ascertainable in~~
7 25 ~~accordance with section 490.120, subsection 12. The term~~
7 26 ~~"facts" includes, but is not limited to, the occurrence of any~~
7 27 ~~event, including a determination or action by any person or~~
7 28 ~~body, including the corporation.~~

7 29 Sec. 11. Section 490.1104, subsection 7, paragraph c, Code
7 30 2007, is amended to read as follows:

7 31 c. Each shareholder of the corporation whose shares were
7 32 outstanding immediately before the effective date of the
7 33 merger or share exchange will hold the same number of shares,
7 34 with identical preferences, ~~limitations, and relative rights,~~
7 35 ~~and limitations~~ immediately after the effective date of
8 1 change.

8 2 Sec. 12. Section 490.1601, subsection 5, unnumbered
8 3 paragraph 1, Code 2007, is amended to read as follows:

8 4 A corporation shall keep a copy of the following records at
8 5 its principal office:

8 6 Sec. 13. Section 490.1601, subsection 5, paragraph a, Code
8 7 2007, is amended to read as follows:

8 8 a. Its articles or restated articles of incorporation, ~~and~~
8 9 ~~all amendments to them currently in effect, and any notices to~~
8 10 ~~shareholders referred to in section 490.120, subsection 12,~~
8 11 ~~paragraph "e", regarding facts on which a filed document is~~
8 12 ~~dependent.~~

DIVISION II

WRITTEN CONSENT

8 15 Sec. 14. Section 490.701, subsection 1, Code 2007, is
8 16 amended to read as follows:

8 17 1. ~~Unless directors are elected by written consent in~~
8 18 ~~lieu of an annual meeting as permitted by section 490.704, a~~
8 19 ~~corporation shall hold annually, at a time stated in or fixed~~
8 20 ~~in accordance with the bylaws, a meeting of shareholders;~~
8 21 ~~provided, however, that if a corporation's articles of~~
8 22 ~~incorporation authorize shareholders to cumulate their votes~~
8 23 ~~when electing directors pursuant to section 490.728, directors~~
8 24 ~~shall not be elected by less than unanimous consent.~~

8 25 Sec. 15. Section 490.703, subsection 1, paragraph a, Code
8 26 2007, is amended to read as follows:

8 27 a. On application of any shareholder of the corporation
8 28 entitled to participate in an annual meeting if an annual
8 29 meeting was not held ~~or action by written consent in lieu~~
8 30 ~~thereof did not become effective~~ within the earlier of six
8 31 months after the end of the corporation's fiscal year or
8 32 fifteen months after its last annual meeting.

8 33 Sec. 16. Section 490.704, subsections 2 through 6, Code
8 34 2007, are amended to read as follows:

8 35 2. ~~The articles of incorporation may provide that any~~
9 1 ~~action required or permitted by this chapter to be taken at a~~
9 2 ~~shareholders' meeting may be taken without a meeting, and~~
9 3 ~~without prior notice, if consents in writing setting forth the~~
9 4 ~~action so taken are signed by the holders of outstanding~~
9 5 ~~shares having not less than the minimum number of votes that~~
9 6 ~~would be required to authorize or take the action at a meeting~~
9 7 ~~at which all shares entitled to vote on the action were~~
9 8 ~~present and voted. The written consent shall bear the date of~~
9 9 ~~signature of each shareholder who signs the consent and no be~~
9 10 ~~delivered to the corporation for inclusion in the minutes or~~
9 11 ~~filing with the corporate records.~~

9 12 3. ~~If not otherwise fixed under section 490.707, and if~~
9 13 ~~prior board action is not required respecting the action to be~~
9 14 ~~taken without a meeting, the record date for determining the~~
9 15 ~~shareholders entitled to take action without a meeting shall~~

9 16 be the first date on which a signed written consent is
9 17 delivered to the corporation. If not otherwise fixed under
9 18 section 490.707 and if prior board action is required
9 19 respecting the action to be taken without a meeting, the
9 20 record date shall be the close of business on the day the
9 21 resolution of the board taking such prior action is adopted.
9 22 No written consent is effective to take the corporate action
9 23 referred to in the consent unless, within sixty days of the
9 24 earliest dated consent delivered in the manner required by
9 25 this section to the corporation, written consents signed by a
9 26 sufficient number of holders to take action are delivered to
9 27 the corporation. A written consent may be revoked by a
9 28 writing to that effect received by the corporation prior to
9 29 the receipt by the corporation of unrevoked written consents
9 30 sufficient in number to take corporate action.
9 31 ~~3. If not otherwise fixed under section 490.703 or~~
9 32 ~~490.707, the record date for determining shareholders entitled~~
9 33 ~~to take action without a meeting is the date the first~~
9 34 ~~shareholder signs the consent under subsection 1.~~
9 35 4. A consent signed under this section has the effect of a
10 1 meeting vote and may be described as such in any document.
10 2 ~~Unless the articles of incorporation, bylaws, or a resolution~~
10 3 ~~of the board of directors provides for a reasonable delay to~~
10 4 ~~permit tabulation of written consents, the action taken by~~
10 5 ~~written consent shall be effective when written consents~~
10 6 ~~signed by the holders of shares having sufficient votes to~~
10 7 ~~take the action are delivered to the corporation.~~
10 8 5. If this chapter requires that notice of a proposed
10 9 action be given to ~~nonvoting~~ shareholders ~~not entitled to vote~~
10 10 and the action is to be taken by ~~written~~ consent of the voting
10 11 shareholders, the corporation must give ~~all its nonvoting~~
10 12 shareholders written notice of the ~~proposed~~ action ~~at least~~
10 13 ~~not more than~~ ten days ~~before~~ ~~after~~ (i) written consents to
10 14 ~~take the action is taken, or~~ (ii) such later date that
10 15 tabulation of consents is completed pursuant to an
10 16 authorization under subsection 4. The notice must ~~reasonably~~
10 17 ~~describe the action taken and~~ contain or be accompanied by the
10 18 same material that, under this chapter, would have been
10 19 required to be sent to shareholders not entitled to vote in a
10 20 notice of meeting at which the proposed action would have been
10 21 submitted to the shareholders for action.
10 22 6. ~~Prompt notice of the taking of corporate action without~~
10 23 ~~a meeting by less than unanimous written consent shall be~~
10 24 ~~given to those shareholders who have not consented in writing.~~
10 25 ~~If the action is taken by less than unanimous written consent~~
10 26 ~~of the voting shareholders, the corporation must give its~~
10 27 ~~nonconsenting voting shareholders written notice of the action~~
10 28 ~~not more than ten days after~~ (i) written consents sufficient
10 29 to take the action have been delivered to the corporation, or
10 30 (ii) such later date that tabulation of consents is completed
10 31 pursuant to an authorization under subsection 4. The notice
10 32 must ~~reasonably~~ describe the action taken and contain or be
10 33 accompanied by the same material that, under any provision of
10 34 this chapter, would have been required to be sent to voting
10 35 shareholders in a notice of a meeting at which would have been
11 1 submitted to the shareholders for action. If the taking of
11 2 that corporate action requires the giving of notice under
11 3 section 490.1320, subsection 2, the notice of the action shall
11 4 set forth the matters described in section 490.1322.
11 5 7. The notice requirements in subsections 5 and 6 shall
11 6 not delay the effectiveness of actions taken by written
11 7 consent, and a failure to comply with such notice requirements
11 8 shall not invalidate actions taken by written consent,
11 9 provided that this subsection shall not be deemed to limit
11 10 judicial power to fashion any appropriate remedy in favor of a
11 11 shareholder adversely affected by a failure to give such
11 12 notice within the required time period.
11 13 8. An electronic transmission may be used to consent to an
11 14 action if the electronic transmission contains or is
11 15 accompanied by information from which the corporation can
11 16 determine the date on which the electronic transmission was
11 17 signed and that the electronic transmission was authorized by
11 18 the shareholder, the shareholder's agent, or the shareholder's
11 19 attorney-in-fact.
11 20 9. Delivery of a written consent to the corporation under
11 21 this section is delivery to the corporation's registered agent
11 22 at its registered office or to the secretary of the
11 23 corporation at its principal office.
11 24 Sec. 17. Section 490.1320, subsection 1, Code 2007, is
11 25 amended to read as follows:
11 26 1. ~~¶~~ Where any proposed corporate action described in

11 27 section 490.1302, subsection 1, is to be submitted to a vote
11 28 at a shareholders' meeting, the meeting notice must state that
11 29 the corporation has concluded that the shareholders are, are
11 30 not, or may be entitled to assert appraisal rights under this
11 31 part. If the corporation concludes that appraisal rights are
11 32 or may be available, a copy of this part must accompany the
11 33 meeting notice sent to those record shareholders entitled to
11 34 exercise appraisal rights.

11 35 Sec. 18. Section 490.1320, Code 2007, is amended by adding
12 1 the following new subsection:

12 2 NEW SUBSECTION. 3. Where any corporate action specified
12 3 in section 490.1302, subsection 1, is to be approved by
12 4 written consent of the shareholders pursuant to section
12 5 490.704 all of the following shall apply:

12 6 a. Written notice that appraisal rights are, are not, or
12 7 may be available must be given to each record shareholder from
12 8 whom a consent is solicited at the time consent of such
12 9 shareholder is first solicited and, if the corporation has
12 10 concluded that appraisal rights are or may be available, must
12 11 be accompanied by a copy of this chapter.

12 12 b. Written notice that appraisal rights are, are not, or
12 13 may be available must be delivered together with a notice to
12 14 nonconsenting and nonvoting shareholders required by section
12 15 490.704, subsections 5 and 6, may include materials described
12 16 in section 490.1322 and, if the corporation has concluded that
12 17 appraisal rights are or may be available, must be accompanied
12 18 by a copy of this chapter.

12 19 Sec. 19. Section 490.1321, subsection 1, unnumbered
12 20 paragraph 1, Code 2007, is amended to read as follows:

12 21 ~~If proposed a corporate action requiring appraisal rights~~
~~12 22 under specified in section 490.1302 is submitted to a vote at~~
12 23 a shareholders' meeting, a shareholder who wishes to assert
12 24 appraisal rights with respect to any class or series of shares
12 25 must do all of the following:

12 26 Sec. 20. Section 490.1321, subsection 2, Code 2007, is
12 27 amended to read as follows:

12 28 2. If a corporate action specified in section 490.1302,
12 29 subsection 1, is to be approved by less than unanimous written
12 30 consent, a shareholder who wishes to assert appraisal rights
12 31 with respect to any class or series of shares must not execute
12 32 a consent in favor of the proposed corporate action with
12 33 respect to that class or series of shares.

12 34 3. A shareholder who does not satisfy the requirements of
12 35 subsection 1 or 2 is not entitled to payment under this part.

13 1 Sec. 21. Section 490.1322, subsection 2, unnumbered
13 2 paragraph 1, Code 2007, is amended to read as follows:

13 3 The appraisal notice must be sent no earlier than the date
13 4 the corporate action specified in section 490.1302, subsection
13 5 1, became effective and no later than ten days after such date
13 6 and must do all of the following:

13 7 Sec. 22. Section 490.1322, subsection 2, paragraph a, Code
13 8 2007, is amended to read as follows:

13 9 a. Be accompanied by a form that (i) specifies the date of
13 10 the first announcement to shareholders of the principal terms
13 11 of the proposed corporate action, if any, and (ii) if such
13 12 announcement was made, requires the shareholder asserting
13 13 appraisal rights to certify whether or not beneficial
13 14 ownership of those shares for which appraisal rights are
13 15 asserted was acquired before that date, and that, as to these
13 16 shares, the shareholder did not vote for or consent to the
13 17 transaction.

13 18 Sec. 23. Section 490.1323, subsection 1, Code 2007, is
13 19 amended to read as follows:

13 20 1. A shareholder who receives notice pursuant to section
13 21 490.1322 and who wishes to exercise appraisal rights must
13 22 certify or sign and return the form sent by the corporation
13 23 and, in the case of certificated shares, deposit the
13 24 shareholder's certificates in accordance with the terms of the
13 25 notice by the date referred to in the notice pursuant to
13 26 section 490.1322, subsection 2, paragraph "b", subparagraph
13 27 (2). In addition, if applicable, the shareholder must certify
13 28 on the form whether the beneficial owner of such shares

13 29 acquired beneficial ownership of the shares before the date
13 30 required to be set forth in the notice pursuant to section
13 31 490.1322, subsection 2, paragraph "a". If a shareholder fails
13 32 to make this certification, the corporation may elect to treat
13 33 the shareholder's shares as after-acquired shares under
13 34 section 490.1325. In addition, a shareholder who wishes to
13 35 exercise appraisal rights must execute and return the form
14 1 and, in a case of certificated shares, deposit the
14 2 shareholder's certificates in accordance with the terms of the

14 3 notice by the date referred to in the notice pursuant to
14 4 section 490.1322, subsection 2, paragraph "b", subparagraph
14 5 (2). Once a shareholder deposits that shareholder's
14 6 certificates or, in the case of uncertificated shares, returns
14 7 the executed forms, that shareholder loses all rights as a
14 8 shareholder, unless the shareholder withdraws pursuant to
14 9 subsection 2.

14 10 Sec. 24. Section 490.1325, subsection 1, Code 2007, is
14 11 amended to read as follows:

14 12 1. A corporation may elect to withhold payment required by
14 13 section 490.1324 from any shareholder who was required to but
14 14 did not certify that beneficial ownership of all of the
14 15 shareholder's shares for which appraisal rights are asserted
14 16 was acquired before the date set forth in the appraisal notice
14 17 sent pursuant to section 490.1322, subsection 2, paragraph
14 18 "a".

14 19 EXPLANATION

14 20 DIVISION I. In 2002, the General Assembly enacted H.F.
14 21 2509 which adopted various amendments to Code chapter 490, the
14 22 Iowa Business Corporation Act (see generally 2002 Acts,
14 23 chapter 1154), which were based on the American Bar
14 24 Association's recommended changes to its Model Business
14 25 Corporation Act. This division makes further recommendations
14 26 to the Code chapter based on the association's further review
14 27 of its model Act.

14 28 FILING DOCUMENTS == FACTS OBJECTIVELY ASCERTAINABLE. The
14 29 division amends Code section 490.120 which provides
14 30 requirements for filing documents, including documents which
14 31 refer to extrinsic facts, by providing a new term: "facts
14 32 objectively ascertainable". The term relates to those facts
14 33 which exist outside of a plan (a plan of merger or a plan of
14 34 share exchange) or a filed document (a document filed with the
14 35 secretary of state such as articles of incorporation or
15 1 amendments to those articles) but which may be ascertainable
15 2 by reference to a generally available source of information
15 3 (e.g., a nationally recognized news or information medium,
15 4 statistical or market indices, market prices, currency
15 5 exchange rates, an action by a person who is a party to a plan
15 6 or filed document, or the terms of an agreement). If the
15 7 facts are not ascertainable from one of these qualified
15 8 sources or from a document that is a matter of public record,
15 9 the corporation must file a certificate of amendment with the
15 10 secretary of the state setting forth the fact promptly after
15 11 the time when the fact referred to is first ascertainable or
15 12 changes.

15 13 The division amends Code section 490.202 to provide that
15 14 the provisions of articles of incorporation may be made
15 15 dependent upon "facts objectively ascertainable" outside the
15 16 articles of incorporation. It also amends Code section
15 17 490.1006, by providing that amendments to articles of
15 18 incorporation may be made dependent upon facts objectively
15 19 ascertainable outside the articles of amendment, and by
15 20 providing that the amendment must state if information is
15 21 being filed as a fact which is objectively ascertainable.
15 22 Similarly, the division amends Code sections 490.1102 and
15 23 490.1103 to provide that the terms of a plan of merger or plan
15 24 of share exchange may be made dependent upon facts objectively
15 25 ascertainable outside of the plan. The division amends Code
15 26 section 490.601 relating to a corporation's right to authorize
15 27 the issuance of different types of shares, by allowing a
15 28 corporation to create a class of shares or series within a
15 29 class which includes terms that are dependent upon facts
15 30 objectively ascertainable outside of the certificate of
15 31 incorporation (e.g., dividend rates that vary in relation to
15 32 an external index).

15 33 THE ISSUANCE OF AUTHORIZED SHARES. The division also
15 34 amends Code section 490.601 relating to a corporation's right
15 35 to authorize the issuance of different types of shares, by
16 1 expressly providing that a corporation may issue any class of
16 2 shares or series within a class (e.g., class "A" preferred
16 3 shares being the first series of preferred shares issued by
16 4 the corporation, without par value or attendant voting
16 5 rights). The division provides that the corporation must set
16 6 forth any class of shares or series of shares within a class,
16 7 the number of shares of each class and series, that the
16 8 corporation is authorized to issue. If more than one class or
16 9 series of shares is authorized, the articles must provide
16 10 attributes which distinguish the class or series of shares
16 11 from other classes or series of shares (i.e., "preferences,
16 12 rights, and limitations").

16 13 The division amends Code section 490.602 to allow a

16 14 corporation's board of directors, consistent with the
16 15 corporation's articles of incorporation, to allocate
16 16 authorized but unissued shares of one class or series to other
16 17 designated classes or series without shareholder approval.
16 18 The board must determine the preferences, rights, and
16 19 limitations of the shares in the same manner as provided in
16 20 Code section 490.601.

16 21 SHARE OPTIONS. The division amends Code section 490.624,
16 22 which allows a corporation to issue rights, options, or
16 23 warrants for the purchase of shares of the corporation. The
16 24 division allows a board of directors to determine the terms
16 25 and conditions of those rights, options, or warrants, and may
16 26 preclude or limit their exercise, transfer, or receipt.

16 27 DIVISION II. This division, based on recommendations by
16 28 the American Bar Association, amends a number of Code sections
16 29 which relate to written consent and how it relates to
16 30 shareholder voting rights, including Code sections 490.701
16 31 (regular annual meetings), 490.703 (court-ordered meetings),
16 32 and 490.704 (actions authorized without shareholders
16 33 meetings). It also provides for the effect of such written
16 34 consent on shareholder appraisal rights under Code sections
16 35 490.1320 (notice of appraisal rights), 490.1321 (notice of
17 1 intent to demand payment), 490.1322 (appraisal notice and
17 2 form), and 490.1325 (after-acquired shares).

17 3 SHAREHOLDER VOTING RIGHTS. Under current law (Code section
17 4 490.703), a corporation must conduct an annual meeting of
17 5 shareholders or a court may order an annual meeting upon
17 6 petition by a shareholder, if an annual meeting was not held
17 7 within six months after the end of the corporation's fiscal
17 8 year or 15 months after its last annual meeting, whichever is
17 9 earlier. The division provides that an annual meeting is not
17 10 necessary as long as the corporation provides for an
17 11 alternative written consent to its shareholders within those
17 12 deadlines.

17 13 The division provides that directors may be elected by
17 14 written consent of shareholders delivered to the corporation
17 15 in lieu of voting at an annual meeting. The division provides
17 16 that a corporation's articles of incorporation may provide
17 17 that any action allowed or required to be taken at a
17 18 shareholders meeting may be taken by form of written consent,
17 19 and without prior notice, so long as the shareholders approve
17 20 the action by the same margin as would be required for
17 21 shareholder approval at an annual meeting. The earliest that
17 22 the action may take effect is on the date on which the
17 23 requisite number of written consents are delivered to the
17 24 corporation, pursuant to a resolution adopted by a board of
17 25 directors.

17 26 NOTICE TO NONVOTING AND NONCONSENTING SHAREHOLDERS. Under
17 27 current law, a corporation is required to provide that
17 28 nonvoting shareholders be given at least 10 days' written
17 29 notice of a corporation action. The bill removes that
17 30 requirement and provides that in cases where approval is by
17 31 written consent, notice must be given at least 10 days after
17 32 (1) written consent to take the action, or (2) the date that
17 33 tabulation of consents is completed. The same 10-day rule
17 34 applies to nonconsenting voting shareholders. However, the
17 35 failure of the corporation to comply with the notice
18 1 requirements does not affect the effectiveness of the action
18 2 taken by the written consent. The division also provides that
18 3 electronic transmission may be used to consent to an action.

18 4 APPRAISAL RIGHTS. Code chapter 490 provides for appraisal
18 5 rights (sometimes referred to as dissenters' rights) which
18 6 apply when shareholders who are dissatisfied with certain
18 7 extraordinary transactions, such as corporate mergers, may
18 8 dissent from those transactions and require the corporation to
18 9 purchase the dissenters' shares for their fair value (see
18 10 generally Code chapter 490, division XIII, part A).

18 11 The division provides that corporate action triggering
18 12 appraisal rights may be approved by a written consent of
18 13 shareholders. In that instance, the corporation must give a
18 14 written notice to the shareholders which informs them that
18 15 appraisal rights are available, appraisal rights may be
18 16 available, or appraisal rights are not available. If the
18 17 corporation has concluded that appraisal rights are available
18 18 or may be available, the written notice must be accompanied by
18 19 a copy of the Code division. The division requires that the
18 20 shareholder cannot claim appraisal rights if the shareholder
18 21 has executed a written consent in favor of the proposed
18 22 corporate action.

18 23 LSB 1075HC 82

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