

# Senate Study Bill 3221

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
AGRICULTURE BILL BY  
CHAIRPERSON FRAISE)

Passed Senate, Date \_\_\_\_\_ Passed House, 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 6447SC 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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