

**House File 578 - Introduced**

HOUSE FILE 578  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 42)

**A BILL FOR**

1 An Act relating to the boards of directors of public  
2 corporations, and including effective date provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 490.140, Code 2011, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 21A. "*Public corporation*" means a  
4 corporation that has a class of voting stock that is listed on  
5 a national securities exchange or held of record by more than  
6 two thousand shareholders.

7 Sec. 2. Section 490.702, subsection 5, unnumbered paragraph  
8 1, Code 2011, is amended to read as follows:

9 Notwithstanding subsections 1 through 4, a public  
10 ~~corporation which has a class of voting stock that is listed on~~  
11 ~~a national securities exchange, authorized for quotation on the~~  
12 ~~national association of securities dealers automated quotations~~  
13 ~~— national market system, or held of record by more than two~~  
14 ~~thousand shareholders,~~ is required to hold a special meeting  
15 only upon the occurrence of either of the following:

16 Sec. 3. Section 490.803, subsections 2 and 3, Code 2011, are  
17 amended to read as follows:

18 2. a. The number of directors may be increased or decreased  
19 from time to time by amendment to, or in the manner provided  
20 in, the articles of incorporation or the bylaws.

21 b. Notwithstanding paragraph "a", the number of directors of  
22 a public corporation subject to section 490.806A, subsection 1,  
23 shall be increased or decreased only by the affirmative vote of  
24 a majority of its board of directors.

25 3. Directors are elected at the first annual shareholders'  
26 meeting and at each annual meeting thereafter unless their  
27 terms are staggered under section 490.806 or 490.806A.

28 Sec. 4. Section 490.805, subsections 2 and 4, Code 2011, are  
29 amended to read as follows:

30 2. The terms of all other directors expire at the next  
31 annual shareholders' meeting following their election unless  
32 their terms are staggered under section 490.806 or 490.806A.

33 4. The term of a director elected to fill a vacancy expires  
34 at the next shareholders' meeting at which directors are  
35 elected, except as provided in section 490.806A.

1     Sec. 5. Section 490.806, Code 2011, is amended to read as  
2 follows:

3     **490.806 Staggered terms for directors.**

4     ~~The~~ Except as otherwise provided in section 490.806A,  
5 a corporation's articles of incorporation may provide for  
6 staggering the terms of its directors by dividing the total  
7 number of directors into two or three groups, with each group  
8 containing one-half or one-third of the total, as near as may  
9 be. In that event, the terms of directors in the first group  
10 expire at the first annual shareholders' meeting after their  
11 election, the terms of the second group expire at the second  
12 annual shareholders' meeting after their election, and the  
13 terms of the third group, if any, expire at the third annual  
14 shareholders' meeting after their election. At each annual  
15 shareholders' meeting held thereafter, directors shall be  
16 chosen for a term of two years or three years, as the case may  
17 be, to succeed those whose terms expire.

18     Sec. 6. NEW SECTION. **490.806A Public corporations —**  
19 **staggered terms.**

20     1. Except as provided in subsection 2, and notwithstanding  
21 anything to the contrary in the articles of incorporation or  
22 bylaws of a public corporation, the terms of directors of a  
23 public corporation shall be staggered by dividing the number  
24 of directors into three groups, as nearly equal in number as  
25 possible. The first group shall be referred to as "class I  
26 directors", the second group shall be referred to as "class II  
27 directors", and the third group shall be referred to as "class  
28 III directors".

29     a. On or before the date on which a public corporation first  
30 convenes an annual shareholders' meeting following the time  
31 the public corporation becomes subject to this subsection, the  
32 board of directors of the public corporation shall by majority  
33 vote designate from among its members directors to serve as  
34 class I directors, class II directors, and class III directors.

35     b. The terms of directors serving in office on the date that

1 the public corporation becomes subject to this subsection shall  
2 be as follows:

3 (1) Class I directors shall continue in office until the  
4 first annual shareholders' meeting following the date that the  
5 public corporation becomes subject to this subsection, and  
6 until their successors are elected. The shareholders' meeting  
7 shall be conducted not less than eleven months following the  
8 last annual shareholders' meeting conducted before the public  
9 corporation became subject to this subsection.

10 (2) Class II directors shall continue in office until one  
11 year following the first annual shareholders' meeting described  
12 in subparagraph (1), and until their successors are elected.

13 (3) Class III directors shall continue in office until  
14 two years following the first annual shareholders' meeting  
15 described in subparagraph (1), and until their successors are  
16 elected.

17 *c.* At each annual shareholders' meeting of a public  
18 corporation subject to this subsection, the successors to the  
19 class of directors whose term expires at that meeting shall be  
20 elected to hold office for a term of three years following such  
21 meeting and until their successors are elected.

22 *d.* The board of directors of a public corporation subject  
23 to this subsection shall adopt an amendment to its articles of  
24 incorporation as provided in section 490.1005A.

25 *e.* Notwithstanding this subsection, the articles of  
26 incorporation of a public corporation may confer upon the  
27 holders of preferred shares the right to elect one or more  
28 directors pursuant to section 490.804, who shall serve for such  
29 term, and have such voting powers, as shall be stated in the  
30 articles of incorporation.

31 2. Every public corporation shall be subject to subsection  
32 1, unless it is exempt pursuant to this subsection.

33 *a.* (1) In order for a public corporation in existence on  
34 the effective date of this Act to be exempt from subsection 1,  
35 its board of directors must adopt a resolution or take action

1 under section 490.821 expressly making an election to be exempt  
2 from the provisions of subsection 1. Such resolution or action  
3 must be adopted or taken within forty days after the effective  
4 date of this Act.

5 (2) Upon adopting the resolution or taking board action  
6 under section 490.821, the public corporation is no longer  
7 subject to subsection 1, effective immediately unless otherwise  
8 provided for in the resolution or by the board action.

9 b. If on the effective date of this Act the articles of  
10 incorporation of the public corporation already provide for  
11 staggering the terms of its directors under section 490.806,  
12 the public corporation shall be exempt from the provisions of  
13 subsection 1. In such event, no further corporate action is  
14 required, and the public corporation is not required to amend  
15 or modify any provision of its articles of incorporation or  
16 bylaws in order to be exempt from subsection 1.

17 c. A corporation that becomes a public corporation on  
18 or after the effective date of this Act is exempt from the  
19 provisions of subsection 1.

20 Sec. 7. Section 490.810, Code 2011, is amended by adding the  
21 following new subsection:

22 NEW SUBSECTION. 1A. For a public corporation subject  
23 to section 490.806A, subsection 1, a vacancy on the board of  
24 directors, including but not limited to a vacancy resulting  
25 from an increase in the number of directors, shall be filled  
26 solely by the affirmative vote of a majority of the remaining  
27 directors, even though less than a quorum of the board.

28 Sec. 8. NEW SECTION. 490.1005A Public corporation —  
29 amendment by board of directors.

30 1. The board of directors of a public corporation subject to  
31 section 490.806A, subsection 1, shall adopt an amendment to its  
32 articles of incorporation which includes all of the following:

33 a. A statement that the public corporation is subject to  
34 section 490.806A, subsection 1.

35 b. Any necessary changes to the articles of incorporation

1 required to implement the requirements of section 490.806A,  
2 subsection 1, including by staggering the terms of the board of  
3 directors as described in that subsection.

4 2. Any amendment to the articles of incorporation as  
5 provided in subsection 1 of this section shall be made without  
6 shareholder approval.

7 Sec. 9. REPEAL.

8 1. This Act is repealed on December 31, 2014.

9 2. However, a public corporation that has amended its  
10 articles of incorporation under section 490.1005A prior to  
11 the date of repeal shall continue to stagger the terms of its  
12 directors as provided in section 490.806A, subsection 1, until  
13 such time as the articles of incorporation are specifically  
14 amended to remove or modify the staggered terms in accordance  
15 with the procedures of chapter 490.

16 Sec. 10. EFFECTIVE UPON ENACTMENT. This Act, being deemed  
17 of immediate importance, takes effect upon enactment.

18 EXPLANATION

19 GENERAL. This bill makes special provision for the  
20 management of a public corporation by its board of directors.

21 PUBLIC CORPORATION DEFINED. The bill defines a public  
22 corporation as either (1) having a class of voting stock listed  
23 on a national trading exchange or (2) comprised of more than  
24 2,000 shareholders. It deletes a provision referencing the  
25 national association of securities dealers automated quotations  
26 - national market system to reflect that such system is now a  
27 national securities exchange.

28 STAGGERED TERMS FOR BOARD OF DIRECTORS. Currently, the  
29 terms of directors for all corporations are for one year  
30 (Code section 490.805), unless the terms are staggered by  
31 dividing the total number of directors into two groups with  
32 the directors serving either one or two years depending upon  
33 the group or by dividing directors into three groups with the  
34 directors serving one, two, or three years depending upon the  
35 group (Code section 490.806). The bill requires that all

1 public corporations divide their number of directors into three  
2 equal groups (referred to as "classes") serving staggered  
3 three-year terms as designated by the current board. The  
4 staggered term requirements apply to directors elected by  
5 the public corporation's holders of common shares and not to  
6 directors elected by holders of preferred shares (generally  
7 a class of ownership enjoying a higher status when claiming  
8 assets or earnings).

9 EXEMPTIONS. A public corporation may be exempted from the  
10 new staggered term requirements, regardless of whether it is  
11 subject to the one-term requirements in Code section 490.805  
12 or the staggered term requirements in Code section 490.806.  
13 The exemption applies only if its board makes an election to  
14 opt out of the new staggered term requirements in Code section  
15 490.806A by a date certain. The opt-out provision applies  
16 to a public corporation that existed on the bill's effective  
17 date. A public corporation is automatically exempted from the  
18 new staggered term requirements if it is already subject to the  
19 staggered term requirements in Code section 490.806. It is  
20 not required to amend its articles of incorporation or bylaws.  
21 A corporation that becomes a public corporation on or after  
22 the effective date of the bill is also exempted from the new  
23 staggered term requirements.

24 AMENDMENTS TO ARTICLES OF INCORPORATION. A public  
25 corporation that is subject to the new staggered term  
26 requirements in Code section 490.806A must amend its articles  
27 of incorporation.

28 FUTURE REPEAL. The bill's provisions are repealed on  
29 December 31, 2014. However, a public corporation that has  
30 amended its articles of incorporation to provide for staggered  
31 terms of directors as provided in the bill shall continue to do  
32 so until the articles are amended.

33 EFFECTIVE DATE. The bill takes effect upon enactment.