

**House Study Bill 42 - Introduced**

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ANDERSON)

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

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

5 (b) In order for a corporation which becomes a public  
6 corporation after the effective date of this Act to be  
7 exempt from subsection 1, its board of directors must adopt  
8 a resolution or take action under section 490.821 expressly  
9 making an election to be exempt from the provisions of  
10 subsection 1. Such resolution or action must be adopted or  
11 taken within forty days after the date when the corporation  
12 became a public corporation.

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

17 b. If on the effective date of this Act the articles of  
18 incorporation of the public corporation already provide for  
19 staggering the terms of its directors under section 490.806,  
20 the public corporation shall be exempt from the provisions of  
21 subsection 1. In such event, no further corporate action is  
22 required, and the public corporation is not required to amend  
23 or modify any provision of its articles of incorporation or  
24 bylaws in order to be exempt from subsection 1.

25 3. A public corporation that is exempt pursuant to  
26 subsection 2 may elect to become subject to subsection 1 at any  
27 time. To do so, its board of directors must adopt a resolution  
28 or take action under section 490.821 expressly making the  
29 election. On that date the corporation shall become subject to  
30 subsection 1, unless another date is expressly provided in the  
31 resolution or by the board action.

32 Sec. 7. Section 490.808, subsection 1, Code 2011, is amended  
33 to read as follows:

34 1. a. The Except as provided in paragraph "b", the  
35 shareholders may remove one or more directors with or without

1 cause unless the articles of incorporation provide that  
2 directors may be removed only for cause.

3 b. Notwithstanding its articles of incorporation or bylaws,  
4 the shareholders of a public corporation subject to section  
5 490.806A, subsection 1, shall not remove a director without  
6 cause.

7 Sec. 8. Section 490.810, Code 2011, is amended by adding the  
8 following new subsection:

9 NEW SUBSECTION. 1A. For a public corporation subject  
10 to section 490.806A, subsection 1, a vacancy on the board of  
11 directors, including but not limited to a vacancy resulting  
12 from an increase in the number of directors, shall be filled  
13 solely by the affirmative vote of a majority of the remaining  
14 directors, even though less than a quorum of the board.

15 Sec. 9. NEW SECTION. 490.1005A **Public corporation —**  
16 **amendment by board of directors.**

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

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

22 b. Any necessary changes to the articles of incorporation  
23 required to implement the requirements of section 490.806A,  
24 subsection 1, including by staggering the terms of the board of  
25 directors as described in that subsection.

26 2. Any amendment to the articles of incorporation as  
27 provided in subsection 1 of this section shall be made without  
28 shareholder approval.

29 3. Any amendment to the articles of incorporation as  
30 provided in subsection 1 shall not be subsequently amended,  
31 modified, superseded, or rescinded in a manner that is  
32 inconsistent with the requirements of section 490.806A,  
33 subsection 1.

34 Sec. 10. **EFFECTIVE UPON ENACTMENT.** This Act, being deemed  
35 of immediate importance, takes effect upon enactment.

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EXPLANATION

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

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

STAGGERED TERMS FOR BOARD OF DIRECTORS. Currently, the terms of directors for all corporations are for one year (Code section 490.805), unless the terms are staggered by dividing the total number of directors into two groups with the directors serving either one or two years depending upon the group or by dividing directors into three groups with the directors serving one, two, or three years depending upon the group (Code section 490.806). The bill requires that all public corporations divide their number of directors into three equal groups (referred to as "classes") serving staggered three-year terms as designated by the current board. The staggered term requirements apply to directors elected by the public corporation's holders of common shares and not to directors elected by holders of preferred shares (generally a class of ownership enjoying a higher status when claiming assets or earnings).

EXEMPTIONS. A public corporation may be exempted from the new staggered term requirements, regardless of whether it is subject to the one-term requirements in Code section 490.805 or the staggered term requirements in Code section 490.806. The exemption applies only if its board makes an election to opt out of the new staggered term requirements in Code section 490.806A by a date certain. The opt-out provision applies to a public corporation that existed on the bill's effective date or existed at any time as a private corporation and later became a

1 public corporation after the bill's effective date. A public  
2 corporation is automatically exempted from the new staggered  
3 term requirements if it is already subject to the staggered  
4 term requirements in Code section 490.806. It is not required  
5 to amend its articles of incorporation or bylaws.

6 OPT-IN REQUIREMENTS. For a public corporation that is  
7 exempt from the new staggered term requirements either because  
8 of an opt-out election or automatically, its board may at  
9 any time elect to become subject to the new staggered term  
10 requirements in Code section 490.806A.

11 LIMITATION ON FUTURE AMENDMENTS TO ARTICLES OF  
12 INCORPORATION. A public corporation that is subject to the  
13 new staggered term requirements in Code section 490.806A must  
14 amend its articles of incorporation. The amendment cannot be  
15 revised in the future in a manner that is inconsistent with the  
16 requirements.

17 OTHER PROVISIONS. Once a public corporation becomes subject  
18 to the staggered term requirements in Code section 490.806A,  
19 its directors cannot be removed by the shareholders without  
20 cause. A vacancy on the board is to be filled only by the  
21 affirmative vote of a majority of the remaining directors.

22 EFFECTIVE DATE. The bill takes effect upon enactment.