

Senate Study Bill 3126 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON FRAISE)

A BILL FOR

- 1 An Act revising the Iowa nonprofit corporation Act.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 504.141, subsection 3, Code 2011, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 3. "Board" or "board of directors" means the group of
5 individuals responsible for management of the activities and
6 affairs of a corporation, regardless of the name used to refer
7 to the group. "Board" or "board of directors" includes a
8 designated body to the extent that both of the following are
9 applicable:

10 a. The powers, functions, or authority of the board have
11 been vested in, or are exercised by, the designated body.

12 b. The provisions of this chapter in which the term "board"
13 or "board of directors" is used are relevant to the discharge
14 by the designated body of the body's powers, functions, or
15 authority.

16 Sec. 2. Section 504.141, Code 2011, is amended by adding the
17 following new subsections:

18 NEW SUBSECTION. 8A. "Designated body" means a person or
19 group, other than a committee of the board of directors, that
20 has been vested by the articles of incorporation or bylaws
21 with powers that, if not vested by the articles or bylaws in
22 that person or group, would be required by this chapter to be
23 exercised by the board or the members.

24 NEW SUBSECTION. 11A. "Domestic unincorporated entity" means
25 an unincorporated entity whose internal affairs are governed by
26 the laws of this state.

27 NEW SUBSECTION. 17A. "Foreign unincorporated entity" means
28 an unincorporated entity whose internal affairs are governed by
29 an organic law of a jurisdiction other than this state.

30 NEW SUBSECTION. 34A. a. "Unincorporated entity" means an
31 organization or other legal entity that is not a corporation
32 and that either has a separate legal existence or has the power
33 to acquire an estate in real property in the entity's own name.
34 "Unincorporated entity" includes a general partnership, limited
35 liability company, limited partnership, business or statutory

1 trust, joint stock association, and unincorporated nonprofit
2 association.

3 *b. "Unincorporated entity"* does not include a domestic
4 or foreign business corporation, a nonprofit corporation, an
5 estate, a trust, a governmental subdivision, a state, the
6 United States, or a foreign government.

7 Sec. 3. Section 504.141, subsections 9, 15, and 22, Code
8 2011, are amended to read as follows:

9 9. *"Directors"* means individuals, designated in the articles
10 or bylaws or elected by the incorporators, and their successors
11 and individuals elected or appointed by any other name or title
12 to act as members of the board. "Directors" does not include
13 individuals who are members of a designated body.

14 15. *"Entity"* includes a ~~corporation and foreign corporation,~~
15 ~~business corporation and~~ domestic or foreign business
16 ~~corporation; limited liability company and~~ domestic or foreign
17 ~~limited liability company; profit and nonprofit unincorporated~~
18 ~~association; corporation sole; business trust,~~ domestic or
19 foreign unincorporated entity; estate, partnership, ; trust,
20 ~~and two or more persons having a joint or common economic~~
21 ~~interest; and; state,; the United States, and; governmental~~
22 subdivision; and foreign government.

23 22. *a. "Member"* means a person who on more than one
24 occasion, pursuant to the provisions of a corporation's
25 articles or bylaws, has a right to vote for the election of a
26 director or directors of a corporation, irrespective of how a
27 member is defined in the articles or bylaws of the corporation.
28 A person is not a member because of any of the following:

29 ~~a.~~ (1) The person's rights as a delegate.

30 ~~b.~~ (2) The person's rights to designate a director.

31 ~~c.~~ (3) The person's rights as a director.

32 *b. "Member"* includes a designated body to the extent that
33 all of the following are applicable:

34 (1) The powers, functions, or authority of the member have
35 been vested in, or are exercised by, the designated body.

1 (2) The provisions of this chapter in which the term
2 "member" is used are relevant to the discharge by the designated
3 body of the body's powers, functions, or authority.

4 Sec. 4. Section 504.622, Code 2011, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 01. A membership in a public benefit or
7 mutual benefit corporation may be terminated or suspended for
8 the reasons and in the manner provided in the articles of
9 incorporation or bylaws.

10 Sec. 5. Section 504.622, subsection 1, Code 2011, is amended
11 to read as follows:

12 1. A To the extent the articles of incorporation or bylaws
13 do not address the termination or suspension of a member, a
14 member of a public benefit or mutual benefit corporation shall
15 not be expelled or suspended, and a membership or memberships
16 in such a corporation shall not be terminated or suspended
17 except pursuant to a procedure which is fair and reasonable and
18 is carried out in good faith.

19 Sec. 6. Section 504.701, Code 2011, is amended by adding the
20 following new subsection:

21 NEW SUBSECTION. 7. The articles of incorporation or
22 bylaws may provide that an annual or regular meeting of
23 members is not required to be held at a geographic location
24 if the meeting is held by means of the internet or other
25 electronic communications technology in a manner pursuant to
26 which the members have the opportunity to read or hear the
27 proceedings substantially concurrent with the occurrence of the
28 proceedings, vote on matters submitted to the members, pose
29 questions, and make comments.

30 Sec. 7. Section 504.702, Code 2011, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 6. The articles of incorporation or bylaws
33 may provide that a special meeting of members is not required
34 to be held at a geographic location if the meeting is held
35 by means of the internet or other electronic communications

1 technology in a manner pursuant to which the members have the
2 opportunity to read or hear the proceedings substantially
3 concurrent with the occurrence of the proceedings, vote on
4 matters submitted to the members, pose questions, and make
5 comments.

6 Sec. 8. NEW SECTION. 504.709 **Conduct of meetings.**

7 1. At each meeting of members, an individual shall preside
8 as chair. The chair shall be appointed as follows:

9 a. As provided in the articles of incorporation or bylaws.

10 b. In the absence of a provision in the articles of
11 incorporation or bylaws, by the board of directors.

12 c. In the absence of both a provision in the articles of
13 incorporation or bylaws and an appointment of the chair by the
14 board, by the members at the meeting.

15 2. Except as provided in the articles of incorporation or
16 bylaws, the chair shall determine the order of business and
17 shall have the authority to establish rules for the conduct of
18 the meeting.

19 3. Any rules adopted for, and the conduct of, the meeting
20 shall be fair to the members.

21 4. The chair of the meeting shall announce at the meeting
22 when the polls close for each matter voted upon. If no
23 announcement is made, the polls shall be deemed to have closed
24 upon the final adjournment of the meeting. After the polls
25 are closed, no ballots, proxies, or votes, or any otherwise
26 permissible revocations or changes thereto may be accepted.

27 Sec. 9. NEW SECTION. 504.719 **Inspectors of election.**

28 1. A corporation with members may appoint one or more
29 inspectors to act at a meeting of members and to make a report
30 in the form of a record of the inspectors' determinations.
31 Each inspector shall execute the duties of inspector
32 impartially and according to the best of the inspector's
33 ability.

34 2. The inspectors shall do all of the following:

35 a. Ascertain the number of members and their voting power.

- 1 *b.* Determine the members present at the meeting.
- 2 *c.* Determine the validity of proxies and ballots.
- 3 *d.* Count all votes.
- 4 *e.* Determine the result of the voting.

5 3. An inspector may, but is not required to, be a director,
6 member of a designated body, member, officer, or employee of
7 the corporation. A person who is a candidate for an office
8 to be filled at the meeting shall not be an inspector at that
9 meeting.

10 Sec. 10. Section 504.801, subsection 2, Code 2011, is
11 amended to read as follows:

12 2. Except as otherwise provided in this chapter or
13 ~~subsection 3~~ section 504.813, all corporate powers shall be
14 exercised by or under the authority of, and the affairs of the
15 corporation managed under the direction of, and subject to the
16 oversight of, its board of directors.

17 Sec. 11. Section 504.801, subsection 3, Code 2011, is
18 amended by striking the subsection.

19 Sec. 12. NEW SECTION. 504.813 Designated body.

20 1. Some, but not all, of the powers, authority, or functions
21 of the board of directors of a corporation under this chapter
22 may be vested by the articles of incorporation or bylaws in a
23 designated body. If such a designated body is created, all of
24 the following are applicable:

25 *a.* The provisions of this part and other provisions of
26 law applicable to the rights, duties, and liabilities of the
27 board of directors or directors individually also apply to
28 the designated body and to the members of the designated body
29 individually. The provisions of this part and other provisions
30 of law applicable to meetings, notice, and actions of the board
31 of directors also apply to the designated body in the absence
32 of an applicable rule in the articles of incorporation, bylaws,
33 or internal operating rules of the designated body.

34 *b.* To the extent that the powers, authority, or functions of
35 the board of directors have been vested in the designated body,

1 the directors are relieved from their duties and liabilities
2 with respect to those powers, authority, and functions.

3 *c.* A provision of the articles of incorporation or bylaws
4 regarding the indemnification of directors or limiting the
5 liability of directors adopted pursuant to section 504.202,
6 subsection 2, paragraphs "d" and "e" is applicable to members
7 of the designated body, except as otherwise provided in the
8 articles of incorporation or bylaws.

9 2. Some, but not all, of the rights or obligations of the
10 members of a corporation under this chapter may be vested in
11 a designated body by the articles of incorporation or bylaws.
12 If such a designated body is created, all of the following are
13 applicable:

14 *a.* The provisions of this part and other provisions of
15 law applicable to the rights and obligations of members also
16 apply to the designated body and to members of the designated
17 body individually. The provisions of this part and other
18 provisions of law applicable to meetings, notice, and actions
19 of members also apply to the designated body in the absence
20 of an applicable provision in the articles of incorporation,
21 bylaws, or internal operating rules of the designated body.

22 *b.* To the extent the rights or obligations of the members
23 have been vested in the designated body, the members are
24 relieved from responsibility with respect to those rights and
25 obligations.

26 3. The articles of incorporation or bylaws may prescribe
27 qualifications for members of a designated body. Except
28 as otherwise provided in the articles of incorporation or
29 bylaws, a member of a designated body is not required to be an
30 individual; a director, officer, or member of the corporation;
31 or a resident of this state.

32 Sec. 13. Section 504.826, Code 2011, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 7. A corporation may create or authorize
35 the creation of one or more advisory committees whose members

1 are not required to be directors. An advisory committee is not
2 a committee of the board of directors and shall not exercise
3 any powers of the board.

4 Sec. 14. Section 504.831, Code 2011, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 2A. In discharging board or committee
7 duties, a director must disclose, or cause to be disclosed, to
8 the other board or committee members, information not already
9 known by them, but known by the director to be material to the
10 discharge of the decision-making or oversight functions of the
11 board or committee, except that such disclosure is not required
12 to the extent that the director reasonably believes that doing
13 so would violate a duty imposed by law, a legally enforceable
14 obligation of confidentiality, or a professional ethics rule.

15 Sec. 15. Section 504.831, subsection 5, paragraph c, Code
16 2011, is amended to read as follows:

17 c. A committee of the board or advisory committee of
18 which the director is not a member, as to matters within
19 ~~its~~ the committee's or advisory committee's jurisdiction, if
20 the director reasonably believes the committee or advisory
21 committee merits confidence.

22 Sec. 16. Section 504.834, Code 2011, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 1A. This section does not apply to any of
25 the following:

26 a. An advance to pay reimbursable expenses reasonably
27 expected to be incurred by a director or officer.

28 b. An advance to pay premiums on life insurance if the
29 advance is secured by the cash value of the policy.

30 c. An advance made pursuant to part 5 of this subchapter
31 VIII.

32 d. Loans or advances made pursuant to employee benefit
33 plans.

34 e. A loan secured by the principal residence of an officer.

35 f. A loan to pay relocation expenses of an officer.

1 Sec. 17. NEW SECTION. **504.836 Business opportunities.**

2 1. A director's taking advantage, directly or indirectly,
3 of a business opportunity shall not be the subject of equitable
4 relief, or give rise to an award of damages or other sanctions
5 against the director, in a proceeding by or in the right of a
6 corporation on the ground that such opportunity should have
7 first been offered to the corporation, if before becoming
8 legally obligated respecting the business opportunity, the
9 director brings the opportunity to the attention of the
10 corporation and action is taken by the directors, a committee
11 of the directors, or the members disclaiming the corporation's
12 interest in the opportunity in compliance with the procedures
13 set forth in section 504.833, as if the decision being made
14 concerned a conflict of interest transaction.

15 2. In any proceeding seeking equitable relief or other
16 remedy, based upon an alleged improper taking advantage of a
17 business opportunity by a director, the fact that the director
18 did not employ the procedure described in subsection 1 before
19 taking advantage of the opportunity shall not create an
20 inference that the opportunity should have first been presented
21 to the corporation, or alter the burden of proof otherwise
22 applicable to establish that the director breached a duty to
23 the corporation under the circumstances.

24 3. As used in this section, "*director*" includes a member of
25 a designated body.

26 Sec. 18. Section 504.843, Code 2011, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 1A. The duties of an officer include the
29 obligation to inform the specified persons of the following:

30 a. The superior officer to whom or the board of directors
31 or the committee of the board to which the officer reports, of
32 information about the affairs of the corporation known to the
33 officer, within the scope of the officer's functions, and known
34 to the officer to be material to the superior officer, board,
35 or committee.

1 *b.* The officer's superior officer, or another appropriate
2 person within the corporation, or the board of directors, or
3 a committee of the board, of any actual or probable material
4 violation of law involving the corporation or any material
5 breach of duty to the corporation by an officer, employee,
6 or agent of the corporation, that the officer believes has
7 occurred or is likely to occur.

8 Sec. 19. Section 504.1101, subsection 1, Code 2011, is
9 amended to read as follows:

10 1. Subject to the limitations set forth in section 504.1102,
11 one or more nonprofit corporations may merge with or into any
12 one or more business corporations or nonprofit corporations or
13 ~~limited liability companies~~ unincorporated entities, if the
14 plan of merger is approved as provided in section 504.1103.

15 Sec. 20. Section 504.1101, subsection 2, paragraphs a, c,
16 and d, Code 2011, are amended to read as follows:

17 *a.* The name of each corporation or ~~limited liability company~~
18 unincorporated entity planning to merge and the name of the
19 surviving corporation into which each plans to merge.

20 *c.* The manner and basis, if any, of converting the
21 memberships of each public benefit or religious corporation
22 into memberships of the surviving corporation or ~~limited~~
23 ~~liability company~~ unincorporated entity.

24 *d.* If the merger involves a mutual benefit corporation,
25 the manner and basis, if any, of converting memberships of
26 each merging corporation into memberships, obligations, or
27 securities of the surviving or any other corporation or ~~limited~~
28 ~~liability company~~ unincorporated entity or into cash or other
29 property in whole or in part.

30 Sec. 21. Section 504.1101, subsection 3, paragraph a, Code
31 2011, is amended to read as follows:

32 *a.* Any amendments to the articles of incorporation or bylaws
33 of the surviving corporation or ~~limited liability company~~
34 unincorporated entity to be effected by the planned merger.

35 Sec. 22. Section 504.1102, subsection 1, paragraphs a and b,

1 Code 2011, are amended to read as follows:

2 a. A public benefit or religious corporation, or a
3 domestic unincorporated entity which, if incorporated, would
4 qualify under this chapter as a public benefit or religious
5 corporation.

6 b. A foreign corporation which would qualify under this
7 chapter as a public benefit or religious corporation, or a
8 foreign unincorporated entity which, if incorporated, would
9 qualify under this chapter as a public benefit or religious
10 corporation.

11 Sec. 23. Section 504.1102, subsection 1, paragraph d,
12 unnumbered paragraph 1, Code 2011, is amended to read as
13 follows:

14 A business or mutual benefit corporation, ~~or limited~~
15 ~~liability company~~ an unincorporated entity which, if
16 incorporated, would not qualify as a public benefit or
17 religious corporation, provided that all of the following apply
18 where the public benefit or religious corporation is not the
19 surviving entity in the merger:

20 Sec. 24. Section 504.1102, subsection 1, paragraph d,
21 subparagraphs (2) and (3), Code 2011, are amended to read as
22 follows:

23 (2) The business or mutual benefit corporation or ~~limited~~
24 ~~liability company~~ unincorporated entity which, if incorporated,
25 would not qualify as a public benefit or religious corporation,
26 shall return, transfer, or convey any assets held by it upon
27 condition requiring return, transfer, or conveyance, which
28 condition occurs by reason of the merger, in accordance with
29 such condition.

30 (3) The merger is approved by a majority of directors of
31 the public benefit or religious corporation or managers of
32 an unincorporated entity which, if incorporated, would not
33 qualify as a public benefit or religious corporation, who are
34 not and will not become members or shareholders in or officers,
35 employees, agents, or consultants of the surviving entity.

1 modified to include a designated body within the meaning of the
2 "board of directors" or as a "member" of the corporation and to
3 exclude individuals who are members of a designated body from
4 the definition of a "director".

5 Code section 504.141 is also amended to provide that an
6 "entity" includes an "unincorporated entity" and to include
7 a definition of an "unincorporated entity" which is an
8 organization or other legal entity that is not a corporation
9 and that either has a separate legal existence or has the
10 power to acquire an estate in real property in the entity's
11 own name. An "unincorporated entity" includes specified
12 types of legal entities that are not corporations. An
13 "unincorporated entity" also does not include an estate, a
14 trust, a governmental subdivision, a state, the United States,
15 or a foreign government. There are also definitions for a
16 "domestic unincorporated entity" whose affairs are governed
17 by Iowa law and for a "foreign unincorporated entity" whose
18 affairs are governed by the law of another jurisdiction.

19 Code section 504.622 is amended to provide that membership
20 in a public benefit or mutual benefit corporation may be
21 terminated or suspended as provided in the articles of
22 incorporation or bylaws and to the extent that those items do
23 not address such a termination or suspension, the procedure
24 must be carried out in good faith in a manner which is fair and
25 reasonable.

26 Code sections 504.701 and 504.702 are amended to allow a
27 nonprofit corporation with members to hold an annual or regular
28 meeting or a special meeting by means of the internet or other
29 electronic communications technology so long as members have
30 the opportunity to read or hear the proceedings substantially
31 concurrent with the occurrence of the proceedings and can vote,
32 pose questions, and make comments.

33 New Code section 504.709 requires that an individual preside
34 as chair at each meeting of corporate members as provided in
35 the articles of incorporation or bylaws, as appointed by the

1 board, or as appointed by members at the meeting. Unless
2 otherwise provided by the articles or bylaws, the chair shall
3 determine the order of business and establish rules for the
4 conduct of the meeting.

5 New Code section 504.719 allows a nonprofit corporation with
6 members to appoint one or more inspectors to assist with voting
7 at the meeting and make a report of their determinations and
8 the results of the vote.

9 Code section 504.801 is amended to provide that, with the
10 exception of corporate powers that are vested in a designated
11 body, all such powers shall be exercised by or under the
12 authority of, and the affairs of the corporation shall be
13 managed under the direction and subject to the oversight of,
14 the board of directors.

15 New Code section 504.813 allows some, but not all, of the
16 powers, authority, or functions of the board of directors,
17 or of the rights or obligations of members, of a nonprofit
18 corporation to be vested by the articles of incorporation or
19 bylaws in a designated body. If such a designated body is
20 created, provisions of law applicable to the powers, authority,
21 functions, rights, or obligations of the board of directors,
22 the directors individually, or the members apply to the
23 designated body and its members individually and the directors
24 or members are relieved of their duties and liabilities with
25 respect to those matters vested in the designated body.

26 Code section 504.826 is amended to provide that a nonprofit
27 corporation can create or authorize the creation of one or
28 more advisory committees whose members are not required to be
29 directors of the corporation. Such an advisory committee is
30 not a committee of the board and cannot exercise any powers of
31 the board.

32 Code section 504.831 is amended to provide that in
33 discharging board or committee duties a corporate director
34 must disclose information to the other board or committee
35 members that is not known to them but known by the director to

1 be material to their decision-making or oversight functions,
2 except when such disclosure would violate a legal duty,
3 a legally enforceable obligation of confidentiality, or a
4 professional ethics rule.

5 Code section 504.831 is also amended to allow a director to
6 rely on a committee of the board or an advisory committee of
7 which the director is not a member as to matters within the
8 committee or advisory committee's jurisdiction, if the director
9 reasonably believes the committee or advisory committee merits
10 confidence.

11 Code section 504.834 is amended to provide that the
12 prohibition of that Code section against lending money to or
13 guaranteeing the obligation of a director or officer of the
14 corporation does not apply to certain specified advances and
15 loans.

16 New Code section 504.836 provides that a director's taking
17 advantage, directly or indirectly, of a business opportunity
18 cannot be the subject of equitable relief or give rise to an
19 award of damages or other sanctions against the director, in
20 a proceeding by or in the right of a nonprofit corporation on
21 the ground that the business opportunity should have first
22 been offered to the corporation if before becoming legally
23 obligated on the business opportunity, the director brings the
24 opportunity to the attention of the corporation and action
25 is taken by the directors, a committee of the directors, or
26 the members disclaiming the corporation's interest in the
27 opportunity. This disclaimer must be made in compliance with
28 procedures set forth in Code section 504.833 for conflict of
29 interest transactions by directors. However, in an action
30 seeking equitable relief or other remedy based upon an alleged
31 improper taking advantage of such a business opportunity by a
32 director, the fact that the above procedure was not complied
33 with does not create an inference that the opportunity should
34 have been presented to the corporation or alter the burden
35 of proof necessary to establish a breach of duty to the

1 corporation by the director.

2 Code section 504.843 is amended to provide that a corporate
3 officer has the duty to provide information to specified
4 persons within the corporation about the affairs of the
5 corporation known to the officer to be material and about any
6 actual or probable material violation of law involving the
7 corporation or any material breach of duty to the corporation
8 by an officer, employee, or agent of the corporation.

9 Code section 504.1101 which applies to mergers of nonprofit
10 corporations with other entities, is amended to substitute
11 the newly defined term "unincorporated entity" for "limited
12 liability company". A limited liability company is now
13 encompassed within the definition of an "unincorporated
14 entity", which includes other types of entities as well.

15 Code section 504.1102, which allows certain mergers by
16 public benefit or religious corporations without prior
17 approval of the district court, is amended to also apply to a
18 newly defined "domestic unincorporated entity" and "foreign
19 unincorporated entity" which, if incorporated, would qualify
20 as a public benefit or religious corporation, and to an
21 "unincorporated entity", which if incorporated, would not
22 qualify as a public benefit or religious corporation, but meets
23 other specifications.

24 Code section 504.1102 is also amended to provide that when
25 a merger of a public benefit or religious corporation with
26 a business or mutual benefit corporation or unincorporated
27 entity, which if incorporated would not qualify as a public
28 benefit or religious corporation, will result in the public
29 benefit or religious corporation not surviving, certain
30 conditions must be met.

31 Code section 504.1106 is amended to allow mergers between a
32 newly defined "foreign unincorporated entity" and a domestic
33 nonprofit corporation under specified conditions.