

**House Study Bill 52 - Introduced**

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

**A BILL FOR**

1 An Act relating to nonprofit corporations' powers and duties,  
2 document filings, meetings, mergers, voting procedures, and  
3 the functions of directors and officers.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 504.111, Code 2015, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 12. Whenever a provision of this chapter  
4 permits any of the terms of a plan or a filed document to be  
5 dependent on facts objectively ascertainable outside the plan  
6 or filed document, all of the following provisions apply:

7 a. The manner in which the facts will operate upon the terms  
8 of the plan or filed document shall be set forth in the plan or  
9 filed document.

10 b. The facts may include any of the following:

11 (1) Any of the following that is available in a nationally  
12 recognized news or information medium either in print or  
13 electronically: statistical or market indices, market prices  
14 of any security or group of securities, interest rates,  
15 currency exchange rates, or similar economic or financial data.

16 (2) A determination or action by any person or body,  
17 including the corporation or any other party to a plan or filed  
18 document.

19 (3) The terms of, or actions taken under, an agreement to  
20 which the corporation is a party, or any other agreement or  
21 document.

22 c. As used in this subsection, all of the following apply:

23 (1) "*Filed document*" means a document filed with the  
24 secretary of state under any provision of this chapter except  
25 subchapter XV or section 504.1613.

26 (2) "*Plan*" means a plan of entity conversion or merger.

27 Sec. 2. Section 504.302, Code 2015, is amended by adding the  
28 following new subsection:

29 NEW SUBSECTION. 16A. Serve as a trustee of a trust of which  
30 the corporation is a beneficiary.

31 Sec. 3. Section 504.701, subsection 1, Code 2015, is amended  
32 to read as follows:

33 1. A Except in the case of a corporation with members  
34 that holds meetings only of delegates and not of the members,  
35 a corporation with members shall hold a membership meeting

1 annually at a time stated in or fixed in accordance with  
2 the bylaws. The articles of incorporation or bylaws of a  
3 corporation with members that holds meetings only of delegates  
4 and not of members may provide for meetings of delegates to be  
5 held less frequently than annually but at least once every six  
6 years.

7 Sec. 4. Section 504.712, subsection 1, Code 2015, is amended  
8 to read as follows:

9 1. ~~The right of the members of a corporation, or any class~~  
10 ~~or classes of members, to vote may be limited, enlarged, or~~  
11 ~~denied to the extent specified~~ Except as provided in the  
12 articles of incorporation or, ~~if the articles of incorporation~~  
13 ~~so provide, by the bylaws. Unless so limited, enlarged, or~~  
14 ~~denied, each member, regardless of class, shall be entitled to~~  
15 one vote on each matter submitted to a vote of members.

16 Sec. 5. Section 504.805, subsection 1, Code 2015, is amended  
17 to read as follows:

18 1. The articles or bylaws of a corporation ~~must~~ may specify  
19 the terms of directors. If the term is not specified in the  
20 articles or bylaws, the term of a director is one year. Except  
21 for designated or appointed directors, and except as otherwise  
22 provided in the articles or bylaws, the terms of directors  
23 shall not exceed five years. ~~In the absence of any term~~  
24 ~~specified in the articles or bylaws, the term of each director~~  
25 ~~shall be one year.~~ Directors may be elected for successive  
26 terms.

27 Sec. 6. Section 504.825, Code 2015, is amended to read as  
28 follows:

29 **504.825 Quorum and voting.**

30 1. Except as otherwise provided in this chapter, or the  
31 articles or bylaws of a corporation, a quorum of a board of  
32 directors consists of a majority of the directors in office  
33 immediately before a meeting begins.

34 2. The articles or bylaws shall not authorize a quorum of  
35 fewer than one-third of the number of directors in office.

1     ~~2.~~ 3. If a quorum is present when a vote is taken, the  
2 affirmative vote of a majority of directors present is the act  
3 of the board unless a greater vote is required by this chapter,  
4 the articles of incorporation, or bylaws ~~require the vote of~~  
5 ~~a greater number of directors.~~

6     4. A director who is present at a meeting of the board  
7 of directors when corporate action is taken is considered to  
8 have assented to the action taken unless any of the following  
9 applies:

10     a. The director objects at the beginning of the meeting, or  
11 promptly upon arrival, to holding the meeting or transacting  
12 business at the meeting.

13     b. The director dissents or abstains from the action and any  
14 of the following applies:

15         (1) The dissent or abstention is entered in the minutes of  
16 the meeting.

17         (2) The director delivers notice in the form of a record of  
18 the director's dissent or abstention to the presiding officer  
19 of the meeting before the meeting's adjournment or to the  
20 corporation promptly after adjournment of the meeting.

21     5. The right of dissent or abstention is not available to a  
22 director who votes in favor of the action taken.

23     Sec. 7. Section 504.831, Code 2015, is amended by adding the  
24 following new subsection:

25     NEW SUBSECTION. 2A. In discharging board or committee  
26 duties, a director shall disclose, or cause to be disclosed,  
27 to the other board or committee members information which  
28 the director knows is not already known by them but is known  
29 by the director to be material to the discharge of their  
30 decision-making or oversight functions, except that disclosure  
31 is not required to the extent that the director reasonably  
32 believes that doing so would violate a duty imposed under law,  
33 a legally enforceable obligation of confidentiality, or a  
34 professional ethics rule.

35     Sec. 8. Section 504.834, Code 2015, is amended to read as

1 follows:

2 **504.834 Loans to or guarantees for directors and officers.**

3 1. A corporation shall not lend money to or guarantee the  
4 obligation of a director or officer of the corporation.

5 2. This section does not apply to the situation where the  
6 director or officer is a full-time employee of the corporation  
7 and involves any of the following:

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

10 b. An advance to pay premiums on a policy of life insurance  
11 if the advance is secured by the cash value of the policy.

12 c. Advances pursuant to part 5.

13 d. Loans or advances pursuant to employee benefit plans.

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

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

16 3. The fact that a loan or guarantee is made in violation of  
17 this section does not affect the borrower's liability on the  
18 loan.

19 Sec. 9. Section 504.854, subsection 3, paragraph a,  
20 subparagraph (2), Code 2015, is amended to read as follows:

21 (2) If there are fewer than two disinterested directors,  
22 by the vote necessary for action by the board in accordance  
23 with section 504.825, subsection 2 3, in which authorization  
24 directors who do not qualify as disinterested directors may  
25 participate.

26 Sec. 10. Section 504.1104, Code 2015, is amended to read as  
27 follows:

28 **504.1104 Articles of merger.**

29 1. After a plan of merger is has been adopted and approved  
30 by the board of directors, and if as required by section  
31 504.1103, by the members and any other persons, the surviving  
32 or acquiring corporation shall deliver to the secretary of  
33 state this chapter, articles of merger setting shall be signed  
34 on behalf of each party to the merger by an officer or other  
35 duly authorized representative. The articles shall set forth

1 all of the following, ~~as applicable:~~

2 ~~1. a. The plan of names of the parties to the merger.~~

3 ~~2. b. If approval of members was not required, a statement~~  
4 ~~to that effect and a statement that the plan was approved~~  
5 ~~by a sufficient vote of the board of directors articles of~~  
6 ~~incorporation of the survivor of a merger are amended, or if~~  
7 ~~a new corporation is created as a result of the merger, the~~  
8 ~~amendments to the articles of incorporation of the survivor or~~  
9 ~~the articles of incorporation of the new corporation.~~

10 ~~3. c. If the plan of merger required approval by the~~  
11 ~~members was required, both of the following: of a domestic~~  
12 ~~nonprofit corporation that was a party to the merger, a~~  
13 ~~statement that the plan was duly approved by the members and,~~  
14 ~~if voting by any separate voting group was required, by each~~  
15 ~~such separate voting group, in the manner required by this~~  
16 ~~chapter and the articles of incorporation or bylaws.~~

17 ~~a. The designation, number of memberships outstanding,~~  
18 ~~number of votes entitled to be cast by each class entitled to~~  
19 ~~vote separately on the plan, and number of votes of each class~~  
20 ~~indisputably voting on the plan.~~

21 ~~b. Either the total number of votes cast for and against the~~  
22 ~~plan by each class entitled to vote separately on the plan or~~  
23 ~~the total number of undisputed votes cast for the plan by each~~  
24 ~~class and a statement that the number of votes cast for the~~  
25 ~~plan by each class was sufficient for approval by that class.~~

26 ~~d. If the plan of merger did not require approval by the~~  
27 ~~members of the domestic nonprofit corporation that was a party~~  
28 ~~to the merger, a statement to that effect.~~

29 ~~4. e. If approval of the plan by some person or persons~~  
30 ~~other than the members of the board is required pursuant to~~  
31 ~~section 504.1103, subsection 1, paragraph "c", a statement that~~  
32 ~~the approval was obtained.~~

33 ~~f. As to each foreign nonprofit corporation or eligible~~  
34 ~~entity that was a party to the merger, a statement that the~~  
35 ~~participation of the foreign corporation or eligible entity~~

1 was duly authorized as required by the organic law of the  
2 corporation or eligible entity.

3 2. Terms of the articles of merger may be dependent on facts  
4 objectively ascertainable outside the articles in accordance  
5 with section 504.111, subsection 12.

6 3. Articles of merger must be delivered to the secretary  
7 of state for filing by the survivor of the merger and shall  
8 take effect at the effective time provided in section 504.114.  
9 Articles of merger filed under this section may be combined  
10 with any filing required under the organic law of any domestic  
11 eligible entity involved in the transaction if the combined  
12 filing satisfies the requirements of both this section and the  
13 other organic law.

14 EXPLANATION

15 The inclusion of this explanation does not constitute agreement with  
16 the explanation's substance by the members of the general assembly.

17 BILL'S PROVISIONS. This bill amends a number of provisions  
18 affecting nonprofit corporations. It provides for filing  
19 procedures (Code section 504.111) and the filing of articles  
20 of merger (Code section 504.1104). The bill provides for the  
21 powers of a nonprofit corporation, including by allowing it  
22 to serve as both a trustee and beneficiary of a trust (Code  
23 section 504.302). It also provides for the powers and duties  
24 of members and its delegates as well as its directors and  
25 officers. This includes requirements relating to meetings of  
26 delegates (Code section 504.701), member voting (Code section  
27 504.712), the terms of directors (Code section 504.805),  
28 the voting of directors (Code section 504.825), the duty  
29 of directors to disclose information material to corporate  
30 action (Code section 504.831), and loans made by a nonprofit  
31 corporation to full-time directors or officers (Code section  
32 504.834).

33 BACKGROUND. The model nonprofit corporation Act (MNCA)  
34 as drafted by the American Bar Association was enacted by  
35 the general assembly in 2004 Iowa Acts, ch 1049, codified

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1 in Code chapter 504, and now referred to as the "Revised  
2 Iowa Nonprofit Corporation Act" (Code section 504.101). A  
3 nonprofit corporation is required to file a number of items  
4 with the secretary of state including articles of incorporation  
5 (subchapter I, part 2). It is managed by a board of directors  
6 and operated by its officers and employees. Instead of  
7 shareholders, the corporation may, but is not required to,  
8 have members who may exercise their powers through delegates,  
9 including the power to elect directors (Code sections 504.141  
10 and 504.641).