

House Study Bill 667 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON NUNN)

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 490.803, subsections 2 and 3, Code 2018,
2 are amended to read as follows:

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

6 b. (1) Notwithstanding paragraph "a", the number of
7 directors of a public corporation subject to section 490.806A,
8 subsection 1, and 490.806B shall be increased or decreased
9 only by the affirmative vote of a majority of its board of
10 directors.

11 (2) This paragraph "b" is repealed on January 1, 2022.

12 3. a. Directors are elected at the first annual
13 shareholders' meeting and at each annual meeting thereafter
14 unless their terms are staggered under section 490.806 ~~or~~
15 490.806A.

16 b. (1) Notwithstanding paragraph "a", a director's term
17 shall be staggered as provided in section 490.806A or may be
18 staggered as provided in section 490.806B as enacted in this
19 Act.

20 (2) This subparagraph is repealed on January 1, 2022.

21 Sec. 2. Section 490.805, subsections 2 and 4, Code 2018, are
22 amended to read as follows:

23 2. a. The terms of all other directors expire at the next
24 annual shareholders' meeting following their election unless
25 their terms are staggered under section 490.806 ~~or 490.806A~~.

26 b. (1) Notwithstanding paragraph "a", the terms of
27 directors shall be staggered as provided in sections 490.806
28 or may be staggered as provided in section 490.806B as enacted
29 in this Act.

30 (2) This paragraph "b" is repealed on January 1, 2022.

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

34 b. (1) Notwithstanding paragraph "a", the term of a
35 director elected to fill a vacancy expires as provided in

1 section 490.806A and section 490.806B as enacted in this Act.

2 (2) This paragraph "b" is repealed on January 1, 2022.

3 Sec. 3. Section 490.806, Code 2018, is amended to read as
4 follows:

5 **490.806 Staggered terms for directors.**

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

20 2. a. Subsection 1 does not apply to a public corporation
21 that is subject to section 490.806A but may apply to a public
22 corporation that is subject to section 490.806B as enacted in
23 this Act.

24 b. This subsection is repealed on January 1, 2022.

25 Sec. 4. Section 490.806A, Code 2018, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 3. This section is repealed on January 1,
28 2022.

29 Sec. 5. NEW SECTION. **490.806B Public corporations —**
30 **nonstaggered terms.**

31 1. Notwithstanding section 490.806A, the board of directors
32 of any public corporation which, as of January 1, 2019, is
33 subject to section 490.806A, subsection 1, shall adopt an
34 amendment to its articles of incorporation that includes all
35 of the following:

1 a. The staggered terms of the class I directors, class II
2 directors, and class III directors elected or appointed prior
3 to January 1, 2019, shall cease at the expiration of their then
4 current terms as provided in section 490.806A.

5 b. The terms of directors elected or appointed on or after
6 January 1, 2019, shall expire at the next annual shareholders'
7 meeting following their election or appointment.

8 c. Any other changes that the directors determine are
9 necessary to implement the provisions of this subsection.

10 2. Any amendment to the articles of incorporation as
11 provided in subsection 1 shall be made without shareholder
12 approval.

13 3. Notwithstanding subsection 1, the public corporation's
14 articles of incorporation may provide for staggering the terms
15 of its directors as provided in section 490.806.

16 4. Section 490.803, subsection 2, paragraph "b", and section
17 490.810, subsection 1A, shall continue to apply to a public
18 corporation subject to subsection 1 of this section.

19 5. This section is repealed on January 1, 2022.

20 Sec. 6. Section 490.810, subsection 1A, Code 2018, is
21 amended to read as follows:

22 1A. a. For a public corporation subject to section
23 490.806A, subsection 1, and 490.806B, a vacancy on the board
24 of 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 b. This subsection is repealed on January 1, 2022.

29 Sec. 7. Section 490.1005A, Code 2018, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 3. This section is repealed on January 1,
32 2022.

33 Sec. 8. CONTINUATION OF THE ARTICLES OF INCORPORATION.

34 Notwithstanding the repeals of sections 490.806A and 490.806B
35 as provided in this Act, any amendment to the articles of

1 incorporation of a public corporation adopted in compliance
2 with sections 490.806A and 490.806B and in effect immediately
3 prior to January 1, 2022, shall remain in effect until amended
4 or repealed as provided in the relevant sections of chapter 490
5 as those sections exist on or after January 1, 2022.

6 Sec. 9. EFFECTIVE DATE. The following takes effect January
7 1, 2019:

8 The section of this Act enacting section 490.806B.

9 EXPLANATION

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

12 GENERAL. This bill amends provisions in Code chapter 490
13 ("Iowa Business Corporation Act"), that became effective on
14 March 23, 2011, and created a special requirement governing the
15 terms of office for a public corporation's board of directors
16 (board) elected by its holders of common shares, unless the
17 board elected to opt out of the requirement by a date certain.
18 See 2011 Iowa Acts, chapter 2, and Code section 490.806A, which
19 in part superseded Code sections 490.805 and 490.806.

20 STAGGERED TERMS FOR DIRECTORS. The 2011 Act required the
21 public corporation to divide its directors into three equal
22 groups (referred to as "classes"). The directors are then
23 required to serve staggered three-year terms as designated by
24 the board with no other corporate action required except that
25 the board was required to amend its articles of incorporation
26 (articles) in order to comply with the special requirement.
27 The bill provides that beginning January 1, 2019, a director
28 that was subject to the special requirement due to the 2011
29 Act and whose three-year term is to expire at the next annual
30 shareholder meeting is to be elected in the same manner as
31 the director of any other corporation. This means that the
32 shareholders of the public corporation will elect all directors
33 whose terms are expiring for one-year terms, unless the
34 corporation has adopted the ordinary staggered term method
35 under Code section 490.806.

1 REPEAL. On January 1, 2022, the bill eliminates a majority
2 of the provisions that allowed for the special requirement and
3 effectively restores the provisions in Code chapter 490 as they
4 existed prior to the 2011 Act. The one provision that will
5 survive defines a public corporation. The provision prior to
6 the 2011 Act referenced the national association of securities
7 dealers (NASD) which is no longer in existence. The bill
8 provides that the articles of incorporation survive the repeals
9 of the relevant Code sections.