

Senate File 2378 - Introduced

SENATE FILE 2378
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3183)

(COMPANION TO LSB 6163HV BY
COMMITTEE ON JUDICIARY)

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, or section 490.806B, shall be increased or
9 decreased only by the affirmative vote of a majority of its
10 board of 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11 (2) This paragraph "b" is repealed on January 1, 2022.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", for a public
17 corporation subject to section 490.806A, subsection 1, or
18 section 490.806B, a director's term shall be staggered as
19 provided in section 490.806A, subsection 1, or may be staggered
20 as provided in section 490.806B.

21 (2) This subparagraph is repealed on January 1, 2022.

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

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

27 *b.* (1) Notwithstanding paragraph "a", for a public
28 corporation subject to section 490.806A, subsection 1, or
29 section 490.806B, the terms of directors shall be staggered as
30 provided in section 490.806A, subsection 1, or may be staggered
31 as provided in section 490.806B.

32 (2) This paragraph "b" is repealed on January 1, 2022.

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

1 b. (1) Notwithstanding paragraph "a", for a public
2 corporation subject to section 490.806A, subsection 1, or
3 section 490.806B, the term of a director elected to fill a
4 vacancy expires as provided in section 490.806A, subsection 1,
5 or section 490.806B.

6 (2) This paragraph "b" is repealed on January 1, 2022.

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

9 **490.806 Staggered terms for directors.**

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

24 2. a. Subsection 1 does not apply to a public corporation
25 that is subject to section 490.806A, subsection 1, but may
26 apply to a public corporation that is subject to section
27 490.806B.

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

29 Sec. 4. Section 490.806A, 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. 5. NEW SECTION. **490.806B Public corporations —**
34 **nonstaggered terms.**

35 1. Notwithstanding section 490.806A, the board of directors

1 of any public corporation which, as of January 1, 2019, is
2 subject to section 490.806A, subsection 1, shall adopt an
3 amendment to its articles of incorporation that includes all
4 of the following:

5 *a.* The staggered terms of the class I directors, class II
6 directors, and class III directors elected or appointed prior
7 to January 1, 2019, shall cease at the expiration of their then
8 current terms as provided in section 490.806A, subsection 1.

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

12 *c.* Any other changes that the directors determine are
13 necessary to implement the provisions of this subsection.

14 2. Any amendment to the articles of incorporation as
15 provided in subsection 1 shall be made without shareholder
16 approval.

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

20 4. Section 490.803, subsection 2, paragraph "b", and section
21 490.810, subsection 1A, shall continue to apply to a public
22 corporation subject to subsection 1 of this section.

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

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

26 1A. *a.* For a public corporation subject to section
27 490.806A, subsection 1, or section 490.806B, a vacancy on the
28 board of directors, including but not limited to a vacancy
29 resulting from an increase in the number of directors, shall
30 be filled solely by the affirmative vote of a majority of the
31 remaining directors, even though less than a quorum of the
32 board.

33 *b.* This subsection is repealed on January 1, 2022.

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

1 NEW SUBSECTION. 3. This section is repealed on January 1,
2 2022.

3 Sec. 8. CONTINUATION OF THE ARTICLES OF INCORPORATION.
4 Notwithstanding the repeals of section 490.806A, as amended
5 by this Act and section 490.806B as enacted by this Act,
6 any amendment to the articles of incorporation of a public
7 corporation adopted in compliance with section 490.806A or
8 section 490.806B as described in this section and in effect
9 immediately prior to January 1, 2022, shall remain in effect
10 until amended or repealed as provided in the relevant sections
11 of chapter 490 as those sections exist on or after January 1,
12 2022.

13 Sec. 9. EFFECTIVE DATE. The following takes effect January
14 1, 2019:

15 The section of this Act enacting section 490.806B.

16 EXPLANATION

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

19 GENERAL. This bill amends provisions in Code chapter 490
20 ("Iowa Business Corporation Act"), that became effective on
21 March 23, 2011, and created a special requirement governing the
22 terms of office for a public corporation's board of directors
23 (board), unless the board elected to opt out of the requirement
24 by a date certain. See 2011 Iowa Acts, chapter 2, and Code
25 section 490.806A, which in part superseded Code sections
26 490.805 and 490.806.

27 STAGGERED TERMS FOR DIRECTORS. The 2011 Act required the
28 public corporation to divide its directors into three equal
29 groups (referred to as "classes"). The directors are then
30 required to serve staggered three-year terms. The board was
31 required to amend its articles of incorporation (articles)
32 in order to comply with the special requirement. The bill
33 provides that beginning January 1, 2019, the shareholders
34 of the public corporation will elect all directors whose
35 three-year terms are expiring for one-year terms, unless the

1 corporation has adopted the ordinary staggered term method
2 under Code section 490.806.

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

12 EFFECTIVE DATE. The provisions of the bill take effect July
13 1, 2018, except for the provision allowing directors to serve
14 one-year terms, which takes effect January 1, 2019.