

ASSEMBLY BILL 1186 (LRB -4911)

An Act to amend 11.29 (1), 11.29 (4), 11.38 (1) (a) 1., 11.38 (2) (b), 11.38 (8) (a), 11.38 (8) (b), 13.94 (4) (a) 1., 15.155 (4) (b), 25.17 (3) (dg) 1., 28.02 (4) (b) 5., 30.40 (9), 32.22 (12) (a) (intro.), 36.56 (1), 46.037 (1), 49.45 (21) (d), 49.455 (4) (d) 1., 49.455 (4) (d) 2., 50.90 (2), 59.43 (2) (ag) 1., 62.237 (1) (b), 66.0425 (6), 66.0807 (1), 66.0825 (3) (f), 71.63 (6) (b) 4., 77.51 (10), 77.53 (17r) (f), 91.19 (6), 93.01 (2), 93.06 (4), 93.06 (5), 93.06 (6) (a) to (c), 94.67 (5) (a) (intro.), 96.01 (8), 96.08 (3) (b), 97.32 (1), 97.32 (3), 99.02 (2) (d), 100.201 (1) (b) 2., 100.201 (1) (f) 2., 103.46 (2), 108.02 (2) (dm), 111.01 (2), 126.01 (18), 126.11 (3) (b), 126.26 (2) (b), 126.41 (2) (b), 126.56 (3) (b), 126.56 (9) (h), 126.57 (1) (b) 2., 126.58 (1) (c) 2., 126.59 (1) (c), 126.61 (1) (c) 2., 133.07 (1), 133.09, 134.04 (1), 136.01 (1), 177.015, 178.42 (3) (a), 178.42 (3) (b), 180.0103 (8), 180.0401 (2) (a) 7., 180.0401 (3) (a), 180.1506 (2) (a) 7., 180.1506 (3) (a), 181.0401 (2) (a) 3., 181.0401 (2) (a) 7., 181.0401 (3) (a), 181.1150, 181.1506 (2) (a) 3., 181.1506 (2) (a) 7., 181.1506 (3) (a), 182.01 (3) (intro.), 182.017 (1), 182.025 (1), 183.0103 (2) (a), 183.0103 (2) (b), 183.0103 (2) (c), 183.0103 (4) (a), 196.01 (10), 196.02 (2), 196.09 (1), 196.11 (2), 196.20 (3), 196.205 (1m), 196.205 (2), 196.26 (4) (a), 196.28 (4), 196.37 (4), 196.50 (2) (b), 196.605 (1), 196.807 (1) (a), 199.03 (12), 201.01 (3) (d), 223.105 (1) (b), 231.35 (2) (b), 234.59 (1) (d) 3., 234.622 (7), 421.301 (28), 445.01 (8), 445.12 (3) (a), 551.22 (12), 560.16 (1) (c) (intro.), 560.17 (1) (b), 560.9801 (1) (b), 560.9801 (3) (a) 7., 560.9804 (2) (e), 600.03 (37m), 609.01 (2), 616.09 (1) (c) 1., 706.05 (2m) (b) 2., 815.18 (2) (c), 893.28 (2), 946.69 (1) (c) and 990.01 (14); and to create chapter 193 of the statutes; relating to: unincorporated cooperative associations, granting rule-making authority, and providing a penalty. (FE)

2006

- 04-27. A. Introduced by Representatives **Ainsworth, Albers, Ballweg, Davis, Freese, Gielow, Gunderson, Hahn, Hines, Kestell, Krawczyk, Lehman, LeMahieu, Loeffelholz, McCormick, Musser, Nass, Nerison, Ott, Owens, Petrowski, Steinbrink, Suder, Towns, Townsend, Van Roy, Wieckert, M. Williams, Zepnick and Travis**; cosponsored by Senators **Kapanke, Breske, Brown, Erpenbach, Grothman, Hansen, Harsdorf and Jauch**.
- 04-21. A. Read first time and referred to committee on Rules 1024
- 04-25. A. Placed on calendar 4-27-2006 by committee on Rules.
- 04-27. A. Read a second time 1066
- 04-27. A. Ordered to a third reading 1066
- 04-27. A. Rules suspended 1066
- 04-27. A. Read a third time and **passed** 1066
- 04-27. A. Ordered immediately messaged 1066
- 04-28. S. Received from Assembly.
- 04-28. S. Read first time and referred to committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform.
- 05-01. S. Fiscal estimate received.
- 05-01. S. Fiscal estimate received.
- 05-01. S. Fiscal estimate received.
- 05-02. S. Withdrawn from committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform and rereferred to committee on Senate Organization, pursuant to Senate Rule 46 (2)(c).
- 05-02. S. Available for scheduling.
- 05-02. S. Placed on calendar 5-3-2006 by committee on Senate Organization.
- 05-03. S. Senator Zien added as a cosponsor.
- 05-03. S. Read a second time.
- 05-03. S. Referred to joint committee on Finance.
- 05-03. S. Withdrawn from joint committee on Finance and taken up.
- 05-03. S. Senate amendment 1 offered by Senator Leibham (**LRB a3140**).
- 05-03. S. Refused to adopt Senate amendment 1, Ayes 9, Noes 22.
- 05-03. S. Ordered to a third reading.
- 05-03. S. Rules suspended.
- 05-03. S. Read a third time and **concurred in**, Ayes 26, Noes 5.
- 05-03. S. Ordered immediately messaged.
- 05-04. A. Fiscal estimate received.
- 05-04. A. Received from Senate concurred in.

JN

2005
ENROLLED BILL

05en A B- 1186

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

05-4911/1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

5-8-06
Date

[Signature]
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2005 ASSEMBLY BILL 1186

April 21, 2006 - Introduced by Representatives AINSWORTH, ALBERS, BALLWEG, DAVIS, FREESE, GIELOW, GUNDERSON, HAHN, HINES, KESTELL, KRAWCZYK, LEHMAN, LEMAHIEU, LOEFFELHOLZ, MCCORMICK, MUSSER, NASS, NERISON, OTT, OWENS, PETROWSKI, STEINBRINK, SUDER, TOWNS, TOWNSEND, VAN ROY, WIECKERT, M. WILLIAMS, ZEPNICK and TRAVIS, cosponsored by Senators KAPANKE, BRESKE, BROWN, ERPENBACH, GROTHMAN, HANSEN, HARSDFORF and JAUCH. Referred to Committee on Rules.

1 **AN ACT to amend** 11.29 (1), 11.29 (4), 11.38 (1) (a) 1., 11.38 (2) (b), 11.38 (8) (a),
2 11.38 (8) (b), 13.94 (4) (a) 1., 15.155 (4) (b), 25.17 (3) (dg) 1., 28.02 (4) (b) 5., 30.40
3 (9), 32.22 (12) (a) (intro.), 36.56 (1), 46.037 (1), 49.45 (21) (d), 49.455 (4) (d) 1.,
4 49.455 (4) (d) 2., 50.90 (2), 59.43 (2) (ag) 1., 62.237 (1) (b), 66.0425 (6), 66.0807
5 (1), 66.0825 (3) (f), 71.63 (6) (b) 4., 77.51 (10), 77.53 (17r) (f), 91.19 (6), 93.01 (2),
6 93.06 (4), 93.06 (5), 93.06 (6) (a) to (c), 94.67 (5) (a) (intro.), 96.01 (8), 96.08 (3)
7 (b), 97.32 (1), 97.32 (3), 99.02 (2) (d), 100.201 (1) (b) 2., 100.201 (1) (f) 2., 103.46
8 (2), 108.02 (2) (dm), 111.01 (2), 126.01 (18), 126.11 (3) (b), 126.26 (2) (b), 126.41
9 (2) (b), 126.56 (3) (b), 126.56 (9) (h), 126.57 (1) (b) 2., 126.58 (1) (c) 2., 126.59 (1)
10 (c), 126.61 (1) (c) 2., 133.07 (1), 133.09, 134.04 (1), 136.01 (1), 177.015, 178.42
11 (3) (a), 178.42 (3) (b), 180.0103 (8), 180.0401 (2) (a) 7., 180.0401 (3) (a), 180.1506
12 (2) (a) 7., 180.1506 (3) (a), 181.0401 (2) (a) 3., 181.0401 (2) (a) 7., 181.0401 (3)
13 (a), 181.1150, 181.1506 (2) (a) 3., 181.1506 (2) (a) 7., 181.1506 (3) (a), 182.01 (3)
14 (intro.), 182.017 (1), 182.025 (1), 183.0103 (2) (a), 183.0103 (2) (b), 183.0103 (2)

ASSEMBLY BILL 1186

1 (c), 183.0103 (4) (a), 196.01 (10), 196.02 (2), 196.09 (1), 196.11 (2), 196.20 (3),
2 196.205 (1m), 196.205 (2), 196.26 (4) (a), 196.28 (4), 196.37 (4), 196.50 (2) (b),
3 196.605 (1), 196.807 (1) (a), 199.03 (12), 201.01 (3) (d), 223.105 (1) (b), 231.35
4 (2) (b), 234.59 (1) (d) 3., 234.622 (7), 421.301 (28), 445.01 (8), 445.12 (3) (a),
5 551.22 (12), 560.16 (1) (c) (intro.), 560.17 (1) (b), 560.9801 (1) (b), 560.9801 (3)
6 (a) 7., 560.9804 (2) (e), 600.03 (37m), 609.01 (2), 616.09 (1) (c) 1., 706.05 (2m) (b)
7 2., 815.18 (2) (c), 893.28 (2), 946.69 (1) (c) and 990.01 (14); and *to create* chapter
8 193 of the statutes; **relating to:** unincorporated cooperative associations,
9 granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill authorizes the creation of a new type of business organization, called an unincorporated cooperative association (UCA). Significant provisions of the bill include:

ORGANIZATION***Purpose***

The bill allows a UCA to be organized to market, process, or otherwise change the form or marketability of products (including crops, livestock, and other agricultural products); to manufacture products; to accomplish other purposes that are necessary or convenient to facilitate the production or marketing of products; and to accomplish other purposes that are related to the business of the UCA. In addition, a UCA may be organized to provide products, supplies, and services to its members or to accomplish any other lawful purpose.

Organizers

A UCA may be organized by one or more organizers, who must be individuals over the age of 18. The organizers may act for themselves as individuals or as the agents of other entities. If the UCA's initial board of directors (board) is not named in the UCA's articles of organization (articles), the organizers may elect the initial board or act as directors with all of the powers, rights, duties, and liabilities of directors, until the initial board is elected or until a contribution is accepted, whichever occurs first.

Articles

The organizers of a UCA must file articles with the Department of Financial Institutions (DFI). The bill requires certain information to be listed in the articles. Upon proper filing of the articles, the UCA is chartered as a separate legal entity and it is presumed that the UCA is properly organized. After the articles are filed, the

ASSEMBLY BILL 1186

organizers or the board named in the articles, as applicable, must hold an organizational meeting at the call of a majority of the organizers or of the board, as applicable, or perform other acts necessary for the purposes of transacting business and completing the organization of the cooperative. Under the bill, three days notice is required before any such meeting.

The articles of a UCA may be amended as specified in the bill. Generally, the bill requires the board to adopt a resolution stating the text of the proposed amendment and requires a majority of a quorum of members (or greater number, if specified in the articles or bylaws) to approve the amendment. If the UCA has no members with voting rights, the articles may be amended by majority vote of the board.

Conversion

A UCA may also be organized by converting from another form of business entity into a UCA under a procedure specified in the bill. Generally, to convert into a UCA, a business entity must amend its organizational documents as necessary and file amended articles with DFI.

Name of UCA

The name of a UCA must be distinguishable from the name of all business entities authorized to do business in this state and all names the right to which are, at the time of organization, reserved or provided for by law. The bill also prohibits any business entity from using the term "cooperative" as part of its business name or title, or representing itself as a cooperative, in this state unless the business entity is a UCA, a cooperative organized under current law, or a cooperative organized under a federal law or a law of another state that is consistent with the laws governing a UCA or a cooperative organized under current law.

Registered office and agent

The bill requires a UCA to establish and maintain a registered office and registered agent in this state. The bill specifies how the initial registered office and agent of a UCA is designated, how a registered office or agent may be changed, and how a registered agent may resign.

Bylaws

The bill requires a UCA to have bylaws, which must be adopted before any distributions to members or, if the articles or bylaws provide that rights of certain contributors will be determined in the bylaws, before the acceptance of any such contribution. Under the bill, the bylaws must contain provisions governing the UCA's business affairs and structure; the qualifications, classification, rights, and obligations of members; and the classifications, allocations, and distributions of membership interests which are not otherwise provided in the articles or by statute. The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that is not inconsistent with applicable law or the articles. In addition, the bill specifies certain information that must be listed in the bylaws if the information is not stated in the articles. This information includes, among other things, provisions concerning classes of member interests, rights to

ASSEMBLY BILL 1186

share in profits or distributions of the UCA, voting and governance rights, transfers of member interests, and the election and operation of the board.

With certain exceptions, the bylaws may be adopted or amended by the board. In addition, the bill specifies a procedure by which the members may adopt or amend bylaws at a regular or special members' meeting. The board may not amend the bylaws if the articles, the bylaws, or the statutes reserve the power exclusively to the members; the bylaws expressly prohibit the board from doing so; or the amendment would fix a greater quorum or voting requirement for members or would amend such a provision adopted by members as provided under the bill. Furthermore, a bylaw that fixes a greater quorum or voting requirement for the board generally may be amended only by the members, if the bylaw was originally adopted by the members, or by either the members or the board, if the bylaw was originally adopted by the board.

Unless the articles or bylaws provide otherwise, the bill also allows the board to adopt emergency bylaws for certain purposes if a quorum of the directors cannot be obtained because of a catastrophic event.

Required records

The bill requires a UCA to keep a permanent record of the minutes of all meetings of its members and of the board, all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and all waivers of notices of meetings of the members and of the board. In addition, a UCA must maintain appropriate accounting records. The bill also specifies certain records that a UCA must keep at its principal office. With certain exceptions, the bill allows the board to determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and, policies relating to the confidentiality, disclosure, inspection and copying of records.

POWERS

The bill allows a UCA to do all of the following:

- 1) Perform every act necessary or proper to the conduct of its business or the accomplishment of the purposes of the UCA.
- 2) Exercise all rights, powers, and privileges granted to a cooperative organized under current law, except those that are inconsistent with an express provision of the law governing the UCA.
- 3) Buy, sell, or deal in its own products or the products of any other person and negotiate the sales price of any product the UCA sells.
- 4) Enter into or become a party to a contract for the UCA or for the UCA's individual members or patrons or between the UCA and its members.
- 5) Acquire and hold, lease, mortgage, encumber, sell, exchange and convey real and personal property as the business of the UCA may require.
- 6) Act as a trustee or in any fiduciary capacity for any purpose not inconsistent with the purposes of the UCA.
- 7) Issue bonds and other debt instruments, borrow money, grant security interests, and invest.
- 8) Make certain advances to members or patrons.
- 9) Accept donations.

ASSEMBLY BILL 1186

- 10) Loan money to and borrow money from its members.
- 11) Pay pensions, retirement benefits, and compensation for past services to or for the benefit of the cooperative.
- 12) Establish and carry out employee benefit plans and provisions for the benefit of any or all of its and its affiliates' officers, managers, directors, governors, employees, and agents. If an affiliate is another UCA, the UCA may establish and carry out provisions for the benefit of the affiliate's members who provide services to the UCA, and the families, dependents, and beneficiaries of any of them.
- 13) Indemnify a fiduciary of any employee benefit plan or provision described in item 12), above, and purchase insurance for or on behalf of such a fiduciary.
- 14) Purchase certain types of insurance.
- 15) Acquire, hold, or dispose of ownership interests in other business entities.
- 16) Organize business entities.
- 17) Acquire ownership interests in or organize a federation of organizations conducting business on a cooperative plan under the laws of any state, an entity that is organized for the purpose of forming a district, state, or national marketing, sales, or service agency, or an entity that is organized for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.
- 18) Effect the forfeiture to the UCA of unclaimed allocations, distributions, or credits, unclaimed stock issued by the UCA, and unclaimed deposits held by the UCA, if certain conditions are met. A UCA must use any such forfeited money within one year after the date on which the funds are forfeited for providing scholarships or educational loans to students or for charitable purposes, as determined by the board.
- 19) Exercise certain emergency powers in anticipation of or during any time that a quorum of the directors cannot be obtained because of a catastrophic event.
- 20) Enter into a marketing contract with its patron member or patron, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a specified area exclusively to or through the cooperative or a facility established by the cooperative. The bill specifies who has title to a commodity or product subject to such a contract, the permissible term of such a contract, and certain remedies that are available to a UCA for breach or anticipated breach of such a contract. The bill also includes a civil and a criminal penalty for knowingly inducing or attempting to induce a patron member or patron to breach such a contract or for maliciously and knowingly publishing false reports about the finances or management of the UCA.
- 21) Provide indemnification concerning certain securities laws claims.

DIRECTORS AND OFFICERS***Board authority and selection of directors***

A UCA under the bill is governed by its board, which is required to take all action for and on behalf of the UCA except those actions reserved or granted to members. The bill specifies that each director has a fiduciary duty to represent the best interests of the cooperative and all members collectively. The voting authority of the directors may be allocated according to allocation units or equity classifications of the UCA if the directors elected by patron members have at least 51 percent of the

ASSEMBLY BILL 1186

voting authority on general matters of the UCA or the directors elected by patron members do not have minority voting authority on general matters of the UCA.

The board must have at least five directors, except that the board of a UCA with 50 or fewer members may have as few as three directors. Generally, unless the directors represent districts or units, the directors must be elected at a regular members' meeting. Unless the articles or bylaws so provide, directors may not be elected through the use of any system of voting that permits a voter to allocate multiple votes among eligible candidates.

A majority of the directors must be members and a majority of the directors must be elected exclusively by patron members, unless otherwise provided in the articles or bylaws. Any member that is a business entity or other organization may nominate one or more individuals as candidates for election as a director, unless the articles or bylaws provide otherwise. The bill also authorizes the patron members to elect an outside director who is an expert in financial matters but who has no financial interest in the UCA. An outside director may not receive any compensation other than authorized per diem reimbursements and, unless the articles or bylaws provide otherwise, may not vote. For other directors, the board may fix a rate of compensation, subject to any limits under the articles or bylaws.

The bill specifies how a director may be removed from office, either by the board or by the members, and the manner in which a replacement director may be elected. The bill also permits a director to resign. Furthermore, the bill provides a method for filling any vacancy in the office of director. The method varies depending upon whether the office is filled solely by election of the patron members.

Board meetings

In addition to a typical board meeting, the bill allows a UCA to hold a "virtual board meeting" by utilizing a means of communication through which the directors may simultaneously hear each other during the meeting. Also, a director may participate in any meeting of the board at which other directors are physically present by utilizing a means of communication through which the director, all other directors so participating, and all directors physically present may simultaneously hear each other during the meeting. To the extent permitted in the articles or bylaws, the bill also allows a director to give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, the writing does not constitute presence for purposes of determining the existence of a quorum. However, if the proposal to be acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or opposed, the writing must be counted as the vote of the director as though the director was present at the meeting.

With certain exceptions, unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings, at least three days' notice to all directors as specified in the bill. If the day, time, and place of a board meeting are provided in the articles or bylaws, or announced at a previous board meeting, no notice of the meeting is required. Also, notice that an adjourned meeting will be reconvened need not be given other than by announcement at the meeting at which adjournment is

ASSEMBLY BILL 1186

taken. The bill also permits a director to waive notice of a board meeting by giving a waiver of notice before, at, or after the meeting. In addition, attendance by a director at a board meeting is a waiver of notice of that meeting, unless the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

The bill specifies that, unless otherwise provided in the articles or bylaws, a majority of the directors currently holding office is a quorum for the transaction of business. Any director who objects at the beginning of a board meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection is not considered as present at the meeting for purposes of determining whether a quorum is present. In the absence of a quorum, a majority of the directors present may adjourn a meeting until a time when a quorum is present. In addition, if a quorum is present when a meeting is properly convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than a quorum.

With certain exceptions, the board may take action only by the affirmative vote of a majority of directors present at a meeting at the time the action is taken or a majority of the minimum number of directors that would constitute a quorum for the transaction of business at the meeting. In the latter case, if the action is taken with the authorization of less than all directors, the authorizing directors must ensure that all other directors are notified immediately of the action and its effective date. Failure to provide the notice does not invalidate the action, but any director who did not authorize the action may not be held liable as a result of the action.

As noted, there are certain exceptions to the affirmative vote requirement. Any director who objects at the beginning of a board meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of the majority vote requirement. Also, unless the articles or bylaws provide otherwise, any action required or permitted to be authorized at a board meeting may be authorized without a meeting if that action is authorized by all directors and is evidenced by one or more written statements, signed by each director, describing and consenting to the action. Furthermore, the articles or bylaws may allow the board to take any other action on behalf of the cooperative, other than an action requiring member approval, without a board meeting, if the action is authorized by the number of directors that would be required to approve the action at a board meeting at which all directors were present and if the action is evidenced by one or more written statements as described above.

Board authority over UCA property

The bill allows the board to sell, lease, transfer, or otherwise dispose of all or substantially all of the UCA's property in the usual and regular course of the UCA's business. In addition, the board may sell, lease, transfer, or otherwise dispose of all or substantially all of the UCA's property not in the usual and regular course of the UCA's business if the UCA's accountant has given the board an opinion that the UCA

ASSEMBLY BILL 1186

cannot continue as an ongoing business and is under financial duress, the board has given notice to the members of the impending or potential disposition prior to the disposition, and the board has determined that failure to proceed with the disposition would be adverse to the interests of the members and the UCA.

Under the bill, the board may grant a security interest in all or substantially all of the UCA's property whether or not in the usual and regular course of the UCA's business and may transfer any or all of the UCA's property to a business entity all the ownership interests of which are owned by the UCA. In addition, for purposes of debt financing, the board may transfer any or all of the UCA's property to a special purpose entity owned or controlled by the UCA for an asset securitization.

Officers

The bill requires the board to elect a chairperson and one or more vice-chairpersons and to elect or appoint a records officer and a financial officer (or a combined records and financial officer). The chairperson and first vice-chairperson must each be a director and a member. The board may employ a chief executive officer to manage the day-to-day affairs and business of the UCA and may elect additional officers as the articles or bylaws authorize or require.

Audit committee

The bill requires the board to establish an audit committee, consisting of members who will ensure an independent review of the UCA's finances, to review the financial information and accounting reports of the UCA. The board must present audited financial statements to the members unless the articles or bylaws permit unaudited financial statements, the financial statements clearly state that they are not audited, and the financial statements described the difference between the financial statements and audited financial statements that are prepared according to generally accepted accounting processes.

Other committees

The board, by resolution, may establish other committees having the authority of the board in the management of the business of the UCA. The board may also establish a special litigation committee, consisting of one or more independent directors or other independent persons, to consider the legal rights of and remedies available to the UCA and whether those rights should be enforced and those remedies should be pursued. The bill specifies that a special litigation committee is not subject at all times to the direction and control of the board. Under the bill, the establishment of a committee does not alone satisfy certain requirements relating to the standard of conduct of directors. The bill also states that certain duties of directors are also applicable to committee members and, with certain exceptions, allows the articles or bylaws to eliminate or limit the liability of committee members to the UCA or its members for violation of these duties.

Conduct of directors

Under the bill, a director must discharge the duties of the office of director in good faith, in a manner the director reasonably believes to be in the best interests of the UCA, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A director who so performs his or her duties

ASSEMBLY BILL 1186

may not be held liable by reason of being or having been a director. The bill allows a director to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by certain specified persons, unless the director has knowledge that makes the reliance unwarranted. The specified persons include certain officers or employees of the cooperative; counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; and certain committees of the board on which the director does not serve. In addition, under the bill, a director who is present at a meeting of the board when an action is approved by the board is presumed to have assented to the action approved, unless the director is prohibited by a conflict of interest from voting on the action, objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and fails to participate in the meeting after the objection, or votes against the action at the meeting.

The bill also voids certain contracts and transactions entered into by a UCA if specified conflicts of interest exist. Thus, with certain exceptions, a contract or transaction between a UCA and a director; a director's spouse, parent, child, or sibling; the spouse of a director's child or sibling; or a sibling of a director's spouse is void. With certain exceptions, the bill similarly voids any contract or transaction between a UCA and a business entity of which a director is a governor, director, manager, officer, or legal representative or has a material financial interest; a director's spouse, parent, child, or sibling is a governor, director, manager, officer, or legal representative or has a material financial interest; the spouse of a director's child or sibling is a governor, director, manager, officer, or legal representative or has a material financial interest; or a sibling of the director's spouse is a governor, director, manager, officer, or legal representative or has a material financial interest.

Under the bill, such a contract or transaction is not void if the contract or transaction is fair and reasonable as to the UCA at the time it is authorized or ratified by the UCA and requirements relating to disclosure of the conflict are satisfied. Also, such a contract or transaction is not void if the contract or transaction is a distribution, is a contract or transaction that is made available to all members or patron members as part of the cooperative's business, or is the result of a resolution fixing the compensation of a director or of another officer, employee, or agent of the UCA.

Limitation of liability and indemnification

Under the bill, the articles or bylaws may eliminate or limit a director's personal liability to the UCA or its members for monetary damages for violating, among other things, the requirement that the director discharge the director's duties with ordinary care. However, neither the articles nor the bylaws may eliminate or limit the liability of a director for any of the following:

- 1) A breach of the director's duty of loyalty to the UCA or its members.
- 2) An act or omission not in good faith or that involves intentional misconduct or a knowing violation of law.
- 3) A transaction from which the director derived an improper personal benefit.

ASSEMBLY BILL 1186

4) An act or omission occurring before the date on which the provision in the articles or bylaws eliminating or limiting liability becomes effective.

5) A knowing violation of certain securities laws or illegal distributions of the UCA's assets.

Unless the articles or bylaws provide otherwise, the bill requires a UCA to indemnify certain current and former officers and agents of the UCA who are made or threatened to be made a party to litigation. The bill includes procedures that must be followed in determining whether a person is entitled to indemnification, including, in some cases, a determination by a court. The indemnification required under the bill must cover judgments, penalties, and fines applicable to a proceeding, against excise taxes assessed against the current or former officer or agent with both respect to an employee benefit plan and against settlements and reasonable expenses, including certain attorney fees and disbursements. Generally, indemnification is required only if another person is not already providing indemnification against the same amounts, the current or former officer or agent acted in good faith, and the current or former officer or agent did not receive an improper personal benefit or commit an act for which liability cannot be eliminated or limited under the laws governing the UCA.

In the case of a criminal proceeding, indemnification is only required if the current or former officer or agent had no reasonable cause to believe the acts or omissions were unlawful. Also, in the case of acts or omissions committed in an official capacity, as defined in the bill, indemnification is only required if the current or former officer or agent reasonably believed that the acts or omissions were in the best interests of the UCA or predecessor UCA or were not opposed to the best interests of the UCA or predecessor UCA. The bill further specifies that, if the acts or omissions relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the UCA or predecessor UCA if the current or former officer or agent reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

Unless the articles or bylaws provide otherwise, the current or former officer or agent is entitled, upon written request, to payment or reimbursement by the UCA of reasonable expenses, including attorney fees and disbursements, incurred by the current or former officer or agent in advance of the final disposition of the proceeding. The current or former officer or agent must provide the UCA with a written statement that he or she believes in good faith that the applicable criteria for indemnification have been satisfied, along with a written undertaking to repay all amounts so paid or reimbursed by the UCA if it is ultimately determined that the criteria have not been satisfied. The UCA must accept the written undertaking without reference to the current or former officer's or agent's financial ability to make the repayment. If a court determines that the UCA unreasonably refused a director's or officer's request for indemnification, the court must order the UCA to pay the officer's or director's reasonable expenses incurred to obtain the court-ordered indemnification.

ASSEMBLY BILL 1186

The bill requires a UCA that indemnifies or advances expenses to a person under these provisions to report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the date of the first members' meeting occurring after the payment. In addition, the bill allows a UCA to purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the UCA would otherwise be required to indemnify the person against the liability.

MEMBERS***General provisions***

The bill requires a UCA to have at least one patron member. Members may be grouped in districts or units, or on another basis, as authorized in the articles or bylaws. Under the bill, the board may require a member who knowingly, intentionally, or repeatedly violates a provision of the articles or bylaws, or certain contracts with the UCA, to surrender the member's membership interest or the member's governance rights or financial rights. Under the bill, a person is not personally liable for the acts, debts, liabilities, or obligations of a UCA merely on account of the person's status as a member.

Inspection of records

The bill allows a member to inspect and copy any of the required records of the UCA, if certain conditions are satisfied. However, a member generally may not inspect or copy any records relating to the amount of equity capital in the UCA held by any person or any accounts receivable or other amounts due the UCA from any person, or any personnel records or employment records relating to any employee of the UCA. The bill also includes a procedure that applies if the UCA refuses to allow a person to inspect or copy records that the person is entitled to inspect or copy.

Annual members' meeting

Unless the articles or bylaws provide otherwise, a UCA must hold an annual members' meeting. At the annual members' meeting, the officers must submit reports to the members covering the business of the UCA for the previous fiscal year and indicating the condition of the UCA at the close of the fiscal year. The bill specifies notice requirements applicable to the annual members' meeting, which apply to each member unless waived or limited as provided under the bill. Insufficient notice does not invalidate any action taken at the annual members' meeting.

Special members' meetings

The bill allows a special meeting of the members to be called by the board or, if certain requirements are satisfied, by petition of the members. The bill specifies notice requirements applicable to a special members' meeting, which apply to each member unless waived or limited as provided under the bill. Insufficient notice does not invalidate any action taken at the special members' meeting.

Virtual members' meeting

In addition to a typical meeting, the bill allows a UCA to hold a "virtual members' meeting" in a manner similar to the way a virtual board meeting is held.

ASSEMBLY BILL 1186

The bill requires a UCA that holds a virtual members' meeting to implement reasonable measures to verify that each person participating in the meeting by a means of communication is a member and to provide each member participating in the meeting by a means of communication with a reasonable opportunity to actively participate. A participating member must have an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, to have his or her remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks, if allowed by the procedures governing the meeting, and, if otherwise entitled, to vote on matters submitted to the members.

Actions without a members' meeting

Unless the articles or bylaws provide otherwise, this bill allows a UCA to take any action required or permitted to be authorized at a members' meeting without holding such a meeting, if that action is authorized by all members and is evidenced by one or more written statements, signed by each member, describing and consenting to the action. Also, the articles or bylaws may allow the members to authorize any other action on behalf of the UCA, other than an action requiring board approval, without a members' meeting, if the action is authorized by the number of members that would be required to approve the action at a members' meeting at which all members were present and if the action is evidenced by one or more written statements, signed by each authorizing member, describing and consenting to the action.

Quorum and voting requirements

Unless the articles or bylaws provide otherwise and with certain exceptions relating to votes by class or series of membership interests, a quorum for the transaction of business at a members' meeting is 10 percent of the total number of members for a UCA with 100 or less members and 15 percent of the total number of members for any other UCA. With certain exceptions, the bill allows the members to take action by the affirmative vote of the greater of a majority of the voting power of the membership interests present and entitled to vote on that item of business, a majority of the voting power that would constitute a quorum, or the proportion of voting power specified by law or in the articles or bylaws, or a specified contract between the member and the UCA. Under the bill, any member who objects at the beginning of a members' meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of determining whether quorum and voting requirements are satisfied.

Allocation of voting rights

Under the bill, all patron members collectively have one vote on each issue that patron members may vote upon. Generally, the collective vote of the patron members must be determined by the vote of the majority of patron members voting on the issue. With certain exceptions, in determining the collective vote of patron members, each patron member has one vote on the issue. The bill also provides for voting by delegates if the UCA has districts or other units and, in certain cases, allows a patron member to receive an an additional vote. Unless the articles or bylaws provide

ASSEMBLY BILL 1186

otherwise, no issue that patron members may vote upon may be approved unless, in determining the collective vote of the patron members, the number of patron members voting to approve the issue is a majority of all members voting on the issue. If nonpatron members are authorized, the articles or bylaws may not reduce the required number of patron members voting to approve the issue to less than 51 percent of the total member vote.

The bill allows the board to limit voting rights to members as of a date certain. Under the bill, the board may establish a date for the determination of membership interests entitled to notice of and entitled to vote at a members' meeting. The date established by the board may not be more than 60 days before the date of the meeting. If such a date is established, only members as of that date are entitled to notice of and may vote at that meeting.

Under the bill, if a membership interest is owned jointly by two or more persons, any one of the owners may vote based upon that membership interest, unless the UCA receives written notice from any of the owners denying the authority of that person to vote. If a member has more than one vote, the member may allocate the votes in any way the member chooses. The bill also specifies how votes may be cast by proxies, business entities, subsidiaries of the UCA, and certain fiduciaries and under what circumstances a UCA or its subsidiary may vote membership interests held in a fiduciary capacity.

The bill also allows any nonmember or class of nonmember to vote at a members' meeting in the same manner as patron members are permitted to vote, if authorized by the articles or bylaws.

Member authority over UCA property

With certain exceptions, the bill allows a UCA to sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets not in the usual and regular course of its business, upon those terms and conditions that the board considers expedient, when approved by the affirmative vote of the members owning a majority of the voting power of the interests entitled to vote. The bill requires written notice of any members' meeting at which such a vote will be taken to be given to all members.

MEMBERSHIP INTERESTS***Generally***

The bill generally permits a UCA to increase, decrease, establish, or alter the authorized amount and divisions of membership interests by amending the articles or the bylaws. A membership interest is personal property and does not give the owner of the interest any interest in specific cooperative property. A UCA may issue authorized membership interests on terms and conditions prescribed in the articles or bylaws or, if authorized in the articles or bylaws, on terms and conditions determined by the board. The bill specifies disclosures that a UCA must make to any person to whom a membership interest is issued and to other members. A UCA may not issue a membership interest to any person unless the subscription price of the membership interest has been paid for in money or property. Any subscription price paid for in property must be approved by the board. The bill includes provisions that apply if records of membership interests or UCA securities are missing.

ASSEMBLY BILL 1186***Patron membership interests***

A UCA may have patron members, who must engage in certain transactions for or with the UCA as a condition of receiving financial rights or distributions. A UCA may also have nonpatron members. With certain exceptions, if a UCA has patron members, all patron membership interests, collectively, must have not less than 51 percent of the UCA's financial rights to profit allocations and distributions. The bill allows a UCA to amend its articles, by a majority vote of patron members, to reduce this required percentage to as little as 30 percent. Any amendment to provide for a reduced percentage must be approved by affirmative vote of the patron members.

Nonpatron membership interests

The bill requires each person to whom a membership interest, other than a patron membership interest, is issued to sign a member control agreement (see below for definition) or a statement agreeing to abide by any applicable conditions imposed under the bylaws. Unless the bylaws contain a sufficient description, the UCA must provide each person to whom a nonpatron membership interest is issued a description of the rights and obligations applicable to holders of that nonpatron membership interest, the transferability of that nonpatron membership interest, and the manner in which profits and losses are divided and allocated among the membership interests and membership classes.

Transfer and reacquisition of membership interests

A membership interest may be transferred with the approval of the board. The bill, though, allows a restriction on the transfer or registration of a transfer of membership interests to be imposed by various methods. Such a restriction is not binding with respect to membership interests issued prior to the adoption of the restriction, unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction. Such a restriction is enforceable only if it is not manifestly unreasonable under the circumstances. In addition, such a restriction is enforceable only if the restriction is disclosed as provided in the bill, is imposed under the law governing the UCA or is included in the articles or bylaws, or relates to an uncertificated membership interest and is included in information sent to the holders of such a membership interest.

The articles or bylaws may provide the patron members, individually or collectively, or the UCA with the first privilege of purchasing the membership interests of any class of membership interests offered for sale. In addition, unless the articles or bylaws provide otherwise, a nonpatron member may force the UCA to acquire the member's nonpatron membership interests if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences applicable to the nonpatron membership interests of the nonpatron member. The bill provides a procedure that applies to a nonpatron member who intends to force such an acquisition. The bill also contains provisions concerning the wrongful transfer of certain UCA securities.

Allocation of profits, losses, and distributions

The bill specifies that, unless otherwise provided in the articles or bylaws, the allocation of profits and losses among nonpatron membership interests individually

ASSEMBLY BILL 1186

and patron membership interests collectively shall be based on the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually. Also, if not otherwise provided in the articles or bylaws, distributions of the UCA must be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests individually.

Assignment of financial rights

With certain exceptions, a member's financial rights in a UCA are transferable in whole or in part. An assignment of a member's financial rights under the bill entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment does not dissolve the UCA and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the UCA, or to cause dissolution. In addition, the assignment may not allow the assignee to control the member's exercise of governance or voting rights.

The bill allows a restriction on such an assignment to be imposed in the articles, in the bylaws, in a member control agreement (see below for definition), by a resolution adopted by the members at a members' meeting, or by an agreement among members and the UCA. A restriction may not affect financial rights reflected in the required records of the UCA before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction. Also, a restriction generally is enforceable only if it is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records of the UCA.

The bill also allows a security interest in a member's financial rights to be foreclosed and otherwise enforced, and allows a secured party to assign a member's financial rights in accordance with the chapter of the Uniform Commercial Code dealing with investment securities, without the consent or approval of the member whose financial rights are subject to the security interest.

Statement of membership interest

The bill requires a UCA, upon the request of any member, to state in writing the particular membership interest owned by that member. The statement must also describe the member's rights to vote, if any, and to share in profits, losses, and distributions, restrictions on assignments of the member's financial rights or voting rights, and any assignment of the member's rights then in effect other than a security interest.

Terms of membership interests

Unless the articles or bylaws provide otherwise, all membership interests must be of one class, without series. The membership interests must be patron membership interests and, if authorized, nonpatron membership interests with specified voting rights. Unless the articles or bylaws provide otherwise, the membership interests must have equal rights and preferences in all matters not otherwise provided for by the board. The rights and preferences of membership interests may be made dependent upon facts ascertainable outside the articles or bylaws, or outside the resolution or resolutions establishing the particular class or

ASSEMBLY BILL 1186

series of membership interest, if certain disclosure requirements are satisfied. In addition, the rights and preferences may include by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the UCA in connection with the establishment of the particular class or series of membership interests, if the cooperative retains at its principal office a copy of the operative provisions in the agreements, contracts, or other arrangements.

The bill allows a UCA to specify in the articles or bylaws, or by resolution, that membership interests are subject to the right of the UCA to redeem the membership interests at a price fixed in the articles or bylaws or by the board; that owners of the membership interests may receive cumulative, partially cumulative, or noncumulative distributions; that particular membership interests may have preference over any other class or series of membership interests for the payment of distributions; that the membership interests may be convertible into membership interests of any other class or series; and that, with certain exceptions, the membership interests may have full, partial, or no voting rights. The bill allows the board, by resolution, to establish a class or series of membership interests, set forth the designation of the class or series, and fix the relative rights and preferences of the class or series.

The bill specifies that a subscriber for membership interests or a member is under no obligation to the UCA or its creditors with respect to the membership interests subscribed for or owned, except to pay to the UCA the full consideration for which the membership interests are issued or to be issued.

Judgment creditors

The bill generally allows a court to order the payment of an unsatisfied judgment from a member's or an assignee's financial rights in a UCA.

Powers of estates and fiduciaries

If a member who is an individual dies or a court adjudges the member to be incompetent to manage his or her person or property, or an order for relief under a judgment of bankruptcy is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the rights applicable to the member's membership interest for the purpose of settling the estate or administering the member's property. In addition, if a member is not an individual and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the member's legal representative or successor may exercise all of the rights applicable to the member's membership interest. However, in certain circumstances, if the member's membership interest is terminated, the terminated member's interest is considered to be that of an assignee of financial rights and the rights to be exercised by the executor, administrator, guardian, conservator, trustee, legal representative, or successor are limited accordingly.

Certificated membership interests

The bill allows a UCA to issue certificated membership interests. The UCA must provide each holder of a certificated membership interest with a certificate of membership interest as described under the bill. Among other things, a certificate of membership interest must contain the name of the cooperative; a statement that the cooperative is organized under the laws of this state and the laws established in

ASSEMBLY BILL 1186

this bill; the name of the person to whom the certificate is issued; the number and class of membership interests, and the designation of the series, if any, that the certificate represents; a statement that membership interests are subject to the articles and bylaws; and any restrictions on transfer of the membership interests that the certificate represents. This required information may be stated by reference to the back of the certificate or to another document. A certificate of membership interest is legally presumed to be proof of the ownership of the membership interest that the certificate represents. The bill contains a procedure for the issuance of replacement certificates of membership.

Uncertificated membership interests

Unless prohibited by the articles or bylaws, the board may adopt a resolution permitting uncertificated membership interests. With certain exceptions, the UCA must give each person who obtains an uncertificated membership interest a statement containing the information required to be stated on certificates. Holders of certificated and uncertificated membership interests of the same class and series generally have identical rights and obligations.

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS.***Generally***

If authorized by the board, a UCA may accept a contribution, make agreements requiring a member or potential member to make a contribution as a condition of membership or receipt of a membership interest, and make agreements providing a person with rights to make a contribution. A person may make a contribution to a UCA under the bill by paying money or transferring property to the UCA or performing services to or for the benefit of the UCA, or by promising, in writing, to make such a payment or transfer or perform such services. Under the bill, no purported contribution is an actual contribution until it is accepted by the board, given a value, and recorded accordingly.

Value of contributions

Under the bill, the value accorded to a contribution by the board is legally presumed to be proper if the board acted in good faith and on the basis of methods that are reasonable under the circumstances. The bill specifies that directors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the UCA, or who overvalue property or services received or to be received by the UCA as a contribution, are jointly and severally liable to the UCA for the benefit of the members who did not consent to and are damaged by the consideration or overvaluing of property or services.

The bill requires a UCA to restate the value of all existing contributions upon acceptance of a new contribution. The bill requires the board to follow a specific procedure to calculate the restated value of the contributions, unless a different procedure is provided in the articles or bylaws.

Contribution agreements

As noted above, the board may make agreements requiring a member or potential member to make a contribution as a condition of membership or receipt of

ASSEMBLY BILL 1186

a membership interest. Such an agreement, called a contribution agreement, must be in writing and signed by each person required to make a contribution under the agreement. A person's rights under a contribution agreement generally may not be assigned to nonmembers. Under the bill, a contribution agreement is irrevocable for a period of six months, unless otherwise provided in the contribution agreement or unless each person required to make a contribution under the agreement and, if in existence, the UCA consents to a different period. Unless the contribution agreement provides otherwise, all payments or other actions required under the agreement must be made or taken at the time or times determined by the board. The bill requires the board to ensure that any call for a person to make a payment or perform an action required under a contribution agreement is made uniformly to all membership interests of the same class or series.

Unless the contribution agreement provides otherwise, if a person fails to make a payment required under the contribution agreement, the UCA may bring an action for breach of contract, sell any membership interests that are subject to the contribution agreement and bring an action to collect any deficiency, or cancel the contribution agreement. The bill further requires any person who fails to make a required contribution of property or services to pay to the UCA an amount equal to that portion of the value of the contribution that has not been made, as stated in the UCA's required records.

A UCA may sell membership interests as described above only if the amount due under the contribution agreement relating to those membership interests remains unpaid for a period of 20 days after the UCA gives written notice of demand for payment. The total offering price of the membership interests in such a sale must be at least the amount of the balance owed by the person, plus the expenses incidental to the sale. After such a sale, the UCA must pay to the person whose interest was sold either the amount by which the proceeds of the sale, less the expenses incident to the sale and any additional amounts the person is required to pay under the terms of the contribution agreement, exceeds the amount of the payment the person failed to make or the total amount paid by the person under the contribution agreement, whichever is less.

A UCA may cancel a contribution agreement as described above only if the amount due under the contribution agreement remains unpaid for a period of 20 days after the UCA gives written notice of demand for payment to the person required to make the payment. Unless the contribution agreement provides otherwise, if the UCA cancels a contribution agreement, the UCA may retain any payments made as provided in the contribution agreement.

Contribution rights agreements

As noted above, the board may make agreements to provide a person rights to contribute to the UCA. These agreements, called contribution rights agreements, must be in writing, although they may incorporate terms by reference. A person's rights under a contribution rights agreement generally may not be assigned to nonmembers.

ASSEMBLY BILL 1186***Allocations of profits, losses, and distributions between members***

The bill generally requires profits and losses to be allocated between patron membership interests collectively and nonpatron membership interests collectively on the basis of the value of contributions received from patron membership interests collectively and nonpatron membership interests collectively. However, the allocation of profits to patron membership interests collectively in a fiscal year may not be less than 51 percent of the total profits for that fiscal year, except that, in certain circumstances, this allocation may be reduced to as little as 30 percent of the total profits.

The bill requires the articles or bylaws to prescribe the manner in which cash or other assets of a UCA will be distributed among the membership interests of the UCA. Unless the articles or bylaws provide otherwise, a UCA must distribute cash or other assets to patron membership interests collectively and nonpatron membership interests collectively on the basis of the value of contributions received from patron membership interests collectively and nonpatron membership interests collectively. As above, the distributions to patron membership interests collectively in any fiscal year may not be less than 51 percent of the total distributions for that fiscal year, except that in certain circumstances this required distribution may be reduced to as little as 30 percent of the total distributions.

Allocations and distributions of profit to patron members

The bill allows a UCA to set aside any portion of profits allocated to the patron membership interests that the board determines is advisable for the purpose of creating or maintaining a capital reserve. The bill also allows the board to set aside, from the portion of profits allocated to the patron membership interests, an amount not to exceed 5 percent of the annual net income of the UCA for promoting and encouraging cooperative organization and any amount for reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

At least once per year, a UCA must allocate and distribute to patron members (and, if authorized in the bylaws, to nonmember patrons) all profits allocated to patron members in excess of dividends on equity and additions to reserves. These distributions must be made on the basis of patronage, except that any distributions to nonmember patrons must be made as provided in the bylaws. A cooperative may establish allocation units and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements. Distributions may be made in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, or securities. In addition, if a nonmember patron with patronage credits is not qualified or eligible for membership, the UCA may credit to the nonmember patron's account a refund due to the nonmember patron. The board may issue a certificate of interest to reflect any such credit and, after the board issues such a certificate, the patron may receive distributions of profits in the same manner as a patron member.

ASSEMBLY BILL 1186***Member control agreements***

With certain exceptions, the bill allows any person who has entered into a subscription or contribution agreement, or any member, to enter into a written agreement with the UCA that relates to the control of or the liquidation, dissolution, or termination of the UCA, or any phase of the business and affairs of the UCA. Such an agreement, called a member control agreement, may not take effect unless it is signed by all persons who are then members and all persons who have entered into contribution agreements. A member control agreement may not relate to voting rights of patron members or patron member allocation and distribution provisions. The bill allows any result that is required or permitted to be accomplished through a provision in the bylaws to also be accomplished through a member control agreement.

Unclaimed property

The bill allows a UCA to distribute any abandoned property in its possession to an entity that is exempt from taxation under section 501 (a) of the Internal Revenue Code, rather than delivering the property to the state treasurer under the unclaimed property law. The bill allows the articles or bylaws to extinguish the rights of the owner of the abandoned property upon distribution to the tax exempt entity.

MERGER AND CONSOLIDATION***Generally***

The bill generally allows a UCA to merge or consolidate with any business entity to the extent permitted by the applicable law of the jurisdiction under whose laws the surviving business entity will be organized. To execute a merger or consolidation, the board must prepare a plan of merger or consolidation and notify each member of the proposed merger or consolidation. The plan must then be approved by a specified vote of the members and articles or merger or consolidation must be filed with DFI.

Merger of subsidiary or parent without member approval

The bill generally allows a parent UCA that owns at least 90 percent of the outstanding ownership interests of each class and series of a subsidiary business entity to merge the subsidiary into the parent or the parent into the subsidiary without a vote of the members of the parent or the subsidiary. The bill also generally allows a parent UCA that owns at least 90 percent of the outstanding ownership interests of each class and series of two or more subsidiary business entities to merge the subsidiaries into one another without a vote of the members. However, in neither case may a UCA merge with a business entity organized under the laws of this state, other than a cooperative or UCA, unless the law governing the business entity specifically authorizes merger with a UCA. To execute either type of merger, the board must prepare a plan, give notice of the merger and other information to each member of each applicable subsidiary no later than ten days after the effective date of the merger, and file articles of merger with DFI. If, immediately prior to either type of merger, a business entity that is party to the merger is owned, at least in part, by persons other than the parent UCA or an affiliate of the parent UCA, those

ASSEMBLY BILL 1186

persons have dissenters' rights under the law governing the business entity's organization.

Effect of merger or consolidation

Under the bill, all of the following occur when a merger or consolidation takes effect:

1) All business entities that are party to the merger or consolidation become the business entity surviving the merger or consolidation, as designated in the plan, and the separate existence of every business entity that is party to the merger or consolidation, except the business entity surviving the merger or consolidation, ceases.

2) The title to all property owned by each business entity that is party to the merger or consolidation is vested in the surviving business entity without reversion or impairment.

3) If, under the laws applicable to a business entity that is a party to the merger or consolidation, other than taxation laws, one or more of the owners thereof is liable for the debts and obligations of such business entity, such owner or owners shall continue to be liable for the debts and obligations of the business entity, but only for such debts and obligations accrued during the period or periods in which such laws are applicable to such owner or owners.

4) If, under the laws applicable to the surviving business entity other than taxation laws, one or more of the owners thereof is liable for the debts and obligations of such business entity, the owner or owners of a business entity that is party to the merger, other than the surviving business entity, who become subject to such laws shall be liable for the debts and obligations of the surviving business entity to the extent provided in such laws, but only for such debts and obligations accrued after the merger or consolidation.

5) The surviving business entity has all liabilities of each business entity that is party to the merger or consolidation.

6) A civil, criminal, administrative, or investigatory proceeding pending by or against any business entity that is a party to the merger or consolidation may be continued as if the merger or consolidation did not occur, or the surviving business entity may be substituted in the proceeding for the business entity whose existence ceased.

7) The articles or other similar governing document of the surviving business entity shall be amended to the extent provided in the plan.

8) The interests of each business entity that is party to the merger that are to be converted into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property are converted, and the former holders of the interests are entitled only to the rights provided in the articles of merger or consolidation or to their dissenters' rights under applicable law.

The bill also includes a procedure that a UCA may follow to abandon a merger before it takes effect.

ASSEMBLY BILL 1186**DISSOLUTION*****Voluntary dissolution***

The bill creates a procedure by which a UCA may voluntarily dissolve. In order for a voluntary dissolution to be initiated, a notice of intent to dissolve must be approved by the affirmative vote of the members. The board must then file the notice with DFI; collect, or make provision for the collection of, all unpaid subscriptions for shares and all other debts owing to the UCA; and pay, or make provision for the payment of, all debts, obligations, and liabilities of the UCA. After a notice is filed, the board may lease or dispose of all or substantially all of the property and assets of the UCA without a vote of the members.

Any property of the UCA remaining after discharge of the UCA's debts, obligations, and liabilities may be distributed to the members and former members as provided in the bylaws. If authorized by the members, the UCA's property may be liquidated and disposed of at the discretion of the board. The bill allows certain unclaimed assets to be forfeited to the UCA. After the board has provided for payment of all debts, obligations, and liabilities of the UCA and the remaining property of the UCA has been distributed or otherwise legally disposed of, the board must file articles of dissolution with DFI, at which time the UCA is dissolved.

The bill provides a procedure by which dissolution proceedings may be revoked before the articles of dissolution are filed. The bill also provides for court-supervised voluntary dissolution in certain circumstances.

Involuntary dissolution

The bill allows member, creditors, and the attorney general, in certain circumstances, to sue to dissolve a UCA. Under the bill, a member may bring an action against a UCA for dissolution, liquidation, and equitable relief if any of the following apply:

1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the UCA's affairs and the members are unable to break the deadlock.

2) The directors or those in control of the UCA have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.

3) For a period that includes the time when two consecutive regular members' meetings were held, the members failed to elect successors to directors whose terms expired or would have expired upon the election and qualification of their successors.

4) The UCA's assets are being misapplied or wasted.

5) The UCA's period of duration as provided in the articles has expired and has not been lawfully extended.

A creditor may bring an action against a UCA for dissolution, liquidation, and equitable relief if the creditor has obtained a money judgment against the UCA and an execution on that judgment has been returned unsatisfied or the UCA has admitted in writing that a claim of the creditor against the UCA is due and owing and that the UCA is unable to pay its debts in the ordinary course of business.

After giving a UCA 30 days to make a correction, the attorney general may bring an action against a UCA for dissolution and liquidation, and for equitable relief

ASSEMBLY BILL 1186

for persons other than the attorney general, if the articles and certificate of organization of the UCA were procured through fraud; the UCA was organized for a purpose prohibited by state law or not permitted under the law governing the UCA; the UCA has knowingly violated a law governing the UCA, with intentional disregard of the harm which the law is intended to avert; the UCA has violated more than once a law governing the UCA or has violated more than one law governing the UCA; or the actions of the UCA, or its failure to act, constitutes surrender or abandonment of the business of the UCA.

The bill specifies procedures, including the appointment of a receiver, that apply to involuntary dissolution proceedings (the procedures also apply to court-supervised voluntary dissolution proceedings). In addition, the bill requires the court, in determining whether to order a remedy in an involuntary dissolution proceeding to consider the financial condition of the UCA. The court may not refuse to order a remedy solely on the ground that the UCA has accumulated operating profits or current operating profits. The court must also consider whether relief, other than dissolution, suggested by one or more parties would permanently remedy the cause of the action. If the court finds that a party to an involuntary dissolution proceeding has acted arbitrarily, vexatiously, or in bad faith, the court may award reasonable expenses, including attorney fees and disbursements, to any of the other parties.

With certain exceptions, the bill prohibits any creditor or claimant who does not file a claim or bring an action during the pendency of dissolution proceedings or who has not brought an action before the commencement of dissolution proceedings, and all those claiming through or under the creditor or claimant, from bringing an action to collect on that claim or otherwise enforcing it.

OTHER PROVISIONS***Administration***

The bill specifies UCA filing fees and permits DFI to assess a larger fee by rule for documents filed in paper format. Also, if a UCA makes an erroneous filing, DFI may revoke and expunge the filing and authorize a curative filing. Under the bill, DFI must charge a \$500 fee for any such curative filing.

Statutory references

The bill makes numerous changes to the statutes to incorporate references to UCA's in provisions that currently refer to cooperatives.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

ASSEMBLY BILL 1186

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 11.29 (1) of the statutes is amended to read:

2 11.29 (1) Nothing in this chapter restricts any corporation, cooperative,
3 unincorporated cooperative association, or voluntary association other than a
4 political party or personal campaign committee from making disbursements for the
5 purpose of communicating only with its members, shareholders or subscribers to the
6 exclusion of all other persons, with respect to endorsements of candidates, positions
7 on a referendum or explanation of its views or interests, without reporting such
8 activity. No such corporation, cooperative, or ~~voluntary~~ association may solicit
9 contributions from persons who are not members, shareholders or subscribers to be
10 used for such purposes.

11 **SECTION 2.** 11.29 (4) of the statutes is amended to read:

12 11.29 (4) For purposes of this section, the members of a local or regional
13 cooperative or unincorporated cooperative association are deemed to be members of
14 a state cooperative or unincorporated cooperative association if the local or regional
15 cooperative or unincorporated cooperative association is a member of the state
16 cooperative or unincorporated cooperative association.

17 **SECTION 3.** 11.38 (1) (a) 1. of the statutes is amended to read:

18 11.38 (1) (a) 1. No foreign or domestic corporation, or association organized
19 under ch. 185 or 193, may make any contribution or disbursement, directly or
20 indirectly, either independently or through any political party, committee, group,

ASSEMBLY BILL 1186

1 candidate or individual for any purpose other than to promote or defeat a
2 referendum.

3 **SECTION 4.** 11.38 (2) (b) of the statutes is amended to read:

4 11.38 (2) (b) This section does not prohibit the publication of periodicals by a
5 corporation ~~or~~, a cooperative, or an unincorporated cooperative association in the
6 regular course of its affairs which advise the members, shareholders or subscribers
7 of the disadvantages or advantages to their interests of the election to office of
8 persons espousing certain measures, without reporting such activity.

9 **SECTION 5.** 11.38 (8) (a) of the statutes is amended to read:

10 11.38 (8) (a) A corporation or association organized under ch. 185 or 193 which
11 accepts contributions or makes disbursements for the purpose of influencing the
12 outcome of a referendum is a political group and shall comply with s. 11.23 and other
13 applicable provisions of this chapter.

14 **SECTION 6.** 11.38 (8) (b) of the statutes, as affected by 2005 Wisconsin Act 177,
15 is amended to read:

16 11.38 (8) (b) Except as authorized in s. 11.05 (12) (b) and (13), prior to making
17 any disbursement on behalf of a political group which is promoting or opposing a
18 particular vote at a referendum and prior to accepting any contribution or making
19 any disbursement to promote or oppose a particular vote at a referendum, a
20 corporation or association organized under ch. 185 or 193 shall register with the
21 appropriate filing officer specified in s. 11.02 and appoint a treasurer. The
22 registration form of the corporation or association under s. 11.05 shall designate an
23 account separate from all other corporation or association accounts as a campaign
24 depository account, through which all moneys received or expended for the adoption

ASSEMBLY BILL 1186**SECTION 6**

1 or rejection of the referendum shall pass. The corporation or association shall file
2 periodic reports under s. 11.20 providing the information required under s. 11.06 (1).

3 **SECTION 7.** 13.94 (4) (a) 1. of the statutes is amended to read:

4 13.94 (4) (a) 1. Every state department, board, examining board, affiliated
5 credentialing board, commission, independent agency, council or office in the
6 executive branch of state government; all bodies created by the legislature in the
7 legislative or judicial branch of state government; any public body corporate and
8 politic created by the legislature including specifically the Fox River Navigational
9 System Authority, a professional baseball park district, a local professional football
10 stadium district, a local cultural arts district and a family care district under s.
11 46.2895; every Wisconsin works agency under subch. III of ch. 49; every provider of
12 medical assistance under subch. IV of ch. 49; technical college district boards;
13 development zones designated under s. 560.71; every county department under s.
14 51.42 or 51.437; every nonprofit corporation or cooperative or unincorporated
15 cooperative association to which moneys are specifically appropriated by state law;
16 and every corporation, institution, association or other organization which receives
17 more than 50% of its annual budget from appropriations made by state law, including
18 subgrantee or subcontractor recipients of such funds.

19 **SECTION 8.** 15.155 (4) (b) of the statutes is amended to read:

20 15.155 (4) (b) Members of the rural economic development board appointed
21 under par. (a) 5. shall have experience operating a business located in a rural
22 municipality, as defined in s. 560.17 (1) (d). At least one member shall have
23 experience operating a cooperative or unincorporated cooperative association
24 located in a rural municipality, as defined in s. 560.17 (1) (d).

25 **SECTION 9.** 25.17 (3) (dg) 1. of the statutes is amended to read:

ASSEMBLY BILL 1186

1 25.17 (3) (dg) 1. Direct obligations of the United States and of agencies of and
2 corporations wholly owned by the United States, and direct obligations of federal
3 land banks, federal home loan banks, central bank for cooperatives and banks for
4 cooperatives or unincorporated cooperative associations, international bank for
5 reconstruction and development, the international finance corporation,
6 inter-American development bank, African development bank and Asian
7 development bank, in each case maturing within one year or less from the date of
8 investment.

9 **SECTION 12m.** 28.02 (4) (b) 5. of the statutes is amended to read:

10 28.02 (4) (b) 5. To public utilities ~~and cooperative associations~~, cooperatives
11 organized under ch. 185 to furnish gas, light, heat, power, or water to their members,
12 and to telecommunications cooperatives formed under ch. 185 or 193 when needed
13 for power and telecommunications substations, transformers, booster stations and
14 similar installations.

15 **SECTION 10.** 30.40 (9) of the statutes is amended to read:

16 30.40 (9) “Person” means a natural person, corporation, limited liability
17 company, partnership, association, cooperative, unincorporated cooperative
18 association, municipality or other local governmental unit, private or public utility,
19 municipal power district, estate or trust, the United States, a federal agency, the
20 state of Wisconsin or a state agency.

21 **SECTION 11.** 32.22 (12) (a) (intro.) of the statutes is amended to read:

22 32.22 (12) (a) (intro.) Nothing in this section requires the municipality to
23 rehabilitate a residential building, if it appears at any time that total cost of
24 rehabilitation, including structural repairs and alterations, exceeds 80% of the
25 estimated fair market value of the building when rehabilitation is complete. If the

ASSEMBLY BILL 1186**SECTION 11**

1 municipality determines under this paragraph not to rehabilitate a residential
2 building condemned under this section, the municipality shall sell the building to
3 any corporation organized under ch. 181 that is a nonprofit corporation, as defined
4 in s. 181.0103 (17), or any cooperative organized under ch. 185 or 193 which:

5 **SECTION 12.** 36.56 (1) of the statutes is amended to read:

6 36.56 (1) From the appropriation under s. 20.285 (1) (qm), the center for
7 cooperatives under s. 36.11 (40) may award grants to persons to form forestry
8 cooperatives under ch. 185 or 193 that consist primarily of private, nonindustrial
9 owners of woodland. A grant recipient shall provide matching funds equal to 50%
10 of the grant amount awarded. The match may be in the form of money or in-kind
11 services or both, but may not include money received from the state.

12 **SECTION 13.** 46.037 (1) of the statutes is amended to read:

13 46.037 (1) Subject to sub. (1m), each residential child care center and each
14 group home, as defined in s. 48.02 (7), that is licensed under s. 48.625 and
15 incorporated under ch. 180, 181 ~~or~~, 185, or 193 shall establish a per client rate for its
16 services and shall charge all purchasers the same rate.

17 **SECTION 14.** 49.45 (21) (d) of the statutes is amended to read:

18 49.45 (21) (d) This subsection supersedes any provision of chs. 180, 181 ~~and~~,
19 185, and 193.

20 **SECTION 15.** 49.455 (4) (d) 1. of the statutes is amended to read:

21 49.455 (4) (d) 1. The community spouse's expenses for rent or mortgage
22 principal and interest, taxes and insurance for his or her principal residence and, if
23 the community spouse lives in a condominium ~~or~~, a cooperative, or an unincorporated
24 cooperative association, any required maintenance charge.

25 **SECTION 16.** 49.455 (4) (d) 2. of the statutes is amended to read:

ASSEMBLY BILL 1186

1 49.455 (4) (d) 2. The standard utility allowance established under 7 USC 2014
2 (e), except that if the community spouse lives in a condominium ~~or~~ a cooperative, or
3 an unincorporated cooperative association for which the maintenance charge
4 includes utility expenses, the standard utility allowance under 7 USC 2014 (e) is
5 reduced by the amount of the utility expenses included in the maintenance charge.

6 **SECTION 17.** 50.90 (2) of the statutes is amended to read:

7 50.90 (2) “Organization” means a public agency, as defined in s. 46.856 (1) (b),
8 a nonprofit corporation, a for-profit stock corporation, a cooperative, an
9 unincorporated cooperative association, a partnership, a limited liability company
10 or a sole proprietorship.

11 **SECTION 18.** 59.43 (2) (ag) 1. of the statutes, as affected by 2005 Wisconsin Act
12 25, is amended to read:

13 59.43 (2) (ag) 1. Subject to s. 59.72 (5), for recording any instrument entitled
14 to be recorded in the office of the register of deeds, \$11 for the first page and \$2 for
15 each additional page, except that no fee may be collected for recording a change of
16 address that is exempt from a filing fee under s. 185.83 (1) (b) or 193.111 (1) (b).

17 **SECTION 19.** 62.237 (1) (b) of the statutes is amended to read:

18 62.237 (1) (b) “Dwelling” means any structure used or intended to be used for
19 habitation with up to 2 separate units certified for occupancy by the city. “Dwelling”
20 also means any housing cooperative incorporated under ch. 185 or 193.

21 **SECTION 20.** 66.0425 (6) of the statutes is amended to read:

22 66.0425 (6) Subsections (1) to (5) do not apply to telecommunications carriers,
23 as defined in s. 196.01 (8m), telecommunications utilities, as defined in s. 196.01 (10),
24 alternative telecommunications utilities, as defined in s. 196.01 (1d), public service
25 corporations, or ~~to cooperative associations~~ cooperatives organized under ch. 185 to

ASSEMBLY BILL 1186

SECTION 20

1 render or furnish ~~telecommunication service~~, gas, light, heat, or power, or to
2 cooperatives organized under ch. 185 or 193 to render or furnish telecommunications
3 service, but the carriers, utilities, corporations and associations shall secure a permit
4 from the proper official for temporary obstructions or excavations in a highway and
5 are liable for all injuries to person or property caused by the obstructions or
6 excavations.

7 **SECTION 21.** 66.0807 (1) of the statutes is amended to read:

8 66.0807 (1) In this section, "privately owned public utility" includes a
9 cooperative association organized under ch. 185 or 193 for the purpose of producing
10 or furnishing utility service to its members only.

11 **SECTION 22.** 66.0825 (3) (f) of the statutes is amended to read:

12 66.0825 (3) (f) "Person" means a natural person, a public agency, a cooperative,
13 an unincorporated cooperative association, or a private corporation, limited liability
14 company, association, firm, partnership, or business trust of any nature, organized
15 and existing under the laws of any state or of the United States.

16 **SECTION 23.** 71.63 (6) (b) 4. of the statutes is amended to read:

17 71.63 (6) (b) 4. In the employ of the operator of a farm in handling, planting,
18 drying, packaging, processing, freezing, grading, storing or delivering to storage or
19 to market or to a carrier for transportation to market, in its unmanufactured state,
20 any agricultural or horticultural commodity, but only if such operator produced more
21 than one-half of the commodity with respect to which such service was performed,
22 or in the employ of a group of operators of farms (~~), other than a cooperative~~
23 ~~organization or an unincorporated cooperative association~~), in the performance of
24 such services, but only if such operators produced all of the commodity with respect
25 to which such service is performed, but the provisions of this subdivision shall not

ASSEMBLY BILL 1186

1 be deemed to be applicable with respect to service performed in connection with
2 commercial canning or commercial freezing or in connection with any agricultural
3 or horticultural commodity after its delivery to a terminal market for distribution or
4 consumption;

5 **SECTION 24.** 77.51 (10) of the statutes is amended to read:

6 77.51 (10) "Person" includes any natural person, firm, partnership, limited
7 liability company, joint venture, joint stock company, association, public or private
8 corporation, the United States, the state, including any unit or division of the state,
9 any county, city, village, town, municipal utility, municipal power district or other
10 governmental unit, cooperative, unincorporated cooperative association, estate,
11 trust, receiver, personal representative, any other fiduciary, and any representative
12 appointed by order of any court or otherwise acting on behalf of others. "Person" also
13 includes the owner of a single-owner entity that is disregarded as a separate entity
14 under ch. 71.

15 **SECTION 25.** 77.53 (17r) (f) of the statutes is amended to read:

16 77.53 (17r) (f) If the owner or lessee is an estate, a trust or a cooperative, or
17 an unincorporated cooperative association; that estate, that trust and its grantor or
18 that cooperative or association does not have real property or other tangible personal
19 property; except aircraft and such property as hangars, accessories, attachments,
20 fuel and parts required for operation of aircraft; in this state at the time the aircraft
21 is registered in this state.

22 **SECTION 26.** 91.19 (6) of the statutes is amended to read:

23 91.19 (6) The department shall release from a farmland preservation
24 agreement any land acquired for use as an electric generating facility authorized
25 under s. 196.491 (3), or which involves acquisition of the fee by a utility or a

ASSEMBLY BILL 1186**SECTION 26**

1 cooperative organized under ch. 185 or 193 for purposes of generating electricity or
2 other utility uses.

3 **SECTION 27.** 93.01 (2) of the statutes is amended to read:

4 93.01 (2) “Cooperative association” includes cooperatives and foreign
5 cooperatives as defined in ~~s.~~ ss. 185.01 and 193.005.

6 **SECTION 28.** 93.06 (4) of the statutes is amended to read:

7 93.06 (4) LAW ENFORCEMENT. At the request of the attorney general or of any
8 district attorney, assist in the enforcement of any of the following statutes relating
9 to trade: ss. 133.03 to 133.07, 133.10, 133.12 to 133.15, 133.17, 134.01, 185.94,
10 193.105, 784.04 and 939.31.

11 **SECTION 29.** 93.06 (5) of the statutes is amended to read:

12 93.06 (5) PUBLIC MARKETS; COOPERATIVE ASSOCIATIONS. (a) Give assistance in the
13 organization, operation or reorganization of such public markets as are authorized
14 by law, and of cooperative associations and unincorporated cooperative associations.

15 (b) By general order, prescribe uniform systems of accounting for public
16 markets or cooperative associations and unincorporated cooperative associations,
17 and may, by general or special order, require any such market or cooperative
18 association to render report, in form indicated by the department, to show the nature
19 and volume of business, resources, liabilities, profits, losses and any other facts
20 bearing upon the financial condition of the market or cooperative association.

21 **SECTION 30.** 93.06 (6) (a) to (c) of the statutes are amended to read:

22 93.06 (6) COOPERATIVES. (a) By general or special order, require any cooperative
23 association or unincorporated cooperative association doing business in this state to
24 file with the department a verified copy of its bylaws and of any exclusive contract
25 of sale or agency between the association and its members or patrons.

ASSEMBLY BILL 1186

1 (b) Investigate the management of any cooperative association or
2 unincorporated cooperative association doing business in this state, and make the
3 facts relating to the management of the ~~cooperative~~ association available to the
4 members of the association, when a request for a management investigation has
5 been filed with the department, signed by all of the directors or by at least 20% of the
6 members of associations of less than 500 members or by at least 100 members of
7 associations of 500 or more members. The department shall fix and collect a fee for
8 investigations under this paragraph, which shall be the actual cost of the
9 investigation.

10 (c) By general or special order, require any cooperative association or
11 unincorporated cooperative association doing business in this state or in the process
12 of organization to file with the department a report of its promotion expenses.

13 **SECTION 31.** 94.67 (5) (a) (intro.) of the statutes is amended to read:

14 94.67 (5) (a) (intro.) “Commercial application business” means a corporation,
15 a limited liability company, a cooperative association, an unincorporated cooperative
16 association, a partnership, a natural person doing business as a sole proprietor or
17 other nongovernmental business entity that does either of the following:

18 **SECTION 32.** 96.01 (8) of the statutes is amended to read:

19 96.01 (8) “Member-patron” means a person who is a member of a cooperative
20 under ch. 185 or 193 and whose products are marketed through that cooperative.

21 **SECTION 33.** 96.08 (3) (b) of the statutes is amended to read:

22 96.08 (3) (b) A cooperative association or an unincorporated cooperative
23 association engaged in the marketing of affected commodities as the agent of its
24 members may cast a bloc vote or assent for its members, except that it shall exclude
25 from its bloc vote or assent any of its members who are also member-patrons of

ASSEMBLY BILL 1186**SECTION 33**

1 another cooperative or unincorporated cooperative association which intends to cast
2 a bloc vote or assent for those members.

3 **SECTION 34.** 97.32 (1) of the statutes is amended to read:

4 97.32 (1) Special dairy and food inspectors may be appointed by the
5 department for any factory, plant, receiving station, or group thereof, which buys or
6 receives milk or cream for the purpose of manufacturing, processing or any other
7 purpose whatsoever, upon petition therefor signed by more than two-thirds of the
8 regular patrons of such factory, plant, receiving station, or group thereof, or by the
9 officers of such factory, plant, receiving station or group thereof, or of the officers of
10 any association organized under ch. 185 or 193 representing patrons of such factory,
11 plant, receiving station or group thereof, and upon receiving satisfactory proof that
12 such special dairy and food inspectors will be compensated in full for all services
13 rendered and traveling expenses incurred upon and pursuant to such appointment
14 as provided in this section. If the inspector is appointed pursuant to petition signed
15 by the officers of an organization, such compensation and expenses shall be paid by
16 such organization; and any factory, plant, receiving station or group thereof shall pay
17 to the association the checkoff as contracted for between the member and the
18 association. If appointed pursuant to petition signed by patrons, each patron of the
19 factory, plant, receiving station or group thereof shall pay such proportion of the total
20 amount of such compensation and expenses as the amount of milk or cream delivered
21 thereto by the patron bears to the total amount delivered thereto by all patrons. The
22 state shall not be liable for any such compensation or expenses.

23 **SECTION 35.** 97.32 (3) of the statutes is amended to read:

24 97.32 (3) Each such special dairy and food inspector shall have all powers
25 conferred by law upon dairy and food inspectors, shall at all times be under the

ASSEMBLY BILL 1186

1 supervision of the department and shall make such reports to the department as the
2 department may require. The special dairy and food inspector shall supervise and
3 inspect the weighing and testing of and shall inspect all milk, cream, butter or cheese
4 delivered to such factory, plant, receiving station or group thereof, except that if the
5 special dairy and food inspector be appointed upon petition by an association
6 organized under ch. 185 or 193, the special dairy and food inspector shall perform
7 duties only for its members, and for such purpose the special dairy and food inspector
8 may use any or all weighing or testing apparatus in such factory, plant, receiving
9 station or group thereof. In addition to the duties herein specifically prescribed, the
10 special dairy and food inspector shall perform such duties as the patrons or
11 organization compensating the special dairy and food inspector or the department
12 may direct.

13 **SECTION 36.** 99.02 (2) (d) of the statutes is amended to read:

14 99.02 (2) (d) A cooperative association or an unincorporated cooperative
15 association storing farm products and merchandise for members.

16 **SECTION 37.** 100.201 (1) (b) 2. of the statutes is amended to read:

17 100.201 (1) (b) 2. For the purpose of this section any subsidiary or affiliate
18 corporation, limited liability company ~~or~~, cooperative, or unincorporated cooperative
19 association, and any officer, director, partner, member or manager of a corporation,
20 cooperative, unincorporated cooperative association, partnership or limited liability
21 company which is a retailer of selected dairy products, and any individual,
22 corporation, cooperative, unincorporated cooperative association, partnership,
23 limited liability company, association or any other business unit which owns,
24 controls or franchises any retailer or which has any retailer as an affiliate, member
25 or subsidiary, is deemed to be a retailer of selected dairy products and the

ASSEMBLY BILL 1186**SECTION 37**

1 prohibitions of sub. (2) shall also apply to any such person or business unit which
2 sells any selected dairy product at wholesale.

3 **SECTION 38.** 100.201 (1) (f) 2. of the statutes is amended to read:

4 100.201 (1) (f) 2. For the purpose of this section any subsidiary or affiliate
5 corporation, limited liability company ~~or~~, cooperative, or unincorporated cooperative
6 association, and any officer, director, partner, member or manager of a corporation,
7 cooperative, unincorporated cooperative association, partnership or limited liability
8 company which is a wholesaler of selected dairy products, is deemed to be a
9 wholesaler of selected dairy products.

10 **SECTION 39.** 103.46 (2) of the statutes is amended to read:

11 103.46 (2) A contract or agreement for the sale of agricultural, horticultural or
12 dairy products between a producer of those products and a distributor or purchaser
13 of those products, in which either party to the contract or agreement undertakes or
14 promises not to join, become or remain a member of any cooperative association
15 organized under ch. 185 or 193 or of any trade association of the producers,
16 distributors or purchasers of those products.

17 **SECTION 40.** 108.02 (2) (dm) of the statutes is amended to read:

18 108.02 (2) (dm) In the employ of a group of operators of farms, or a cooperative
19 organization or unincorporated cooperative association of which operators of farms
20 are members, in the performance of service described in par. (d), but only if such
21 operators produced more than one-half of the commodity with respect to which such
22 service is performed.

23 **SECTION 41.** 111.01 (2) of the statutes is amended to read:

24 111.01 (2) Industrial peace, regular and adequate income for the employee, and
25 uninterrupted production of goods and services are promotive of all of these

ASSEMBLY BILL 1186

1 interests. They are largely dependent upon the maintenance of fair, friendly and
2 mutually satisfactory employment relations and the availability of suitable
3 machinery for the peaceful adjustment of whatever controversies may arise. It is
4 recognized that certain employers, including farmers ~~and~~, farmer cooperatives, and
5 unincorporated farmer cooperative associations, in addition to their general
6 employer problems, face special problems arising from perishable commodities and
7 seasonal production which require adequate consideration. It is also recognized that
8 whatever may be the rights of disputants with respect to each other in any
9 controversy regarding employment relations, they should not be permitted, in the
10 conduct of their controversy, to intrude directly into the primary rights of third
11 parties to earn a livelihood, transact business and engage in the ordinary affairs of
12 life by any lawful means and free from molestation, interference, restraint or
13 coercion.

14 **SECTION 42.** 126.01 (18) of the statutes is amended to read:

15 126.01 (18) "Person," notwithstanding s. 990.01 (26), means an individual, a
16 corporation, a cooperative, an unincorporated cooperative association, a
17 partnership, a limited liability company, a trust, a state agency, as defined in s.
18 20.001 (1), a local governmental unit, as defined in s. 66.0131 (1) (a), or other legal
19 entity.

20 **SECTION 43.** 126.11 (3) (b) of the statutes is amended to read:

21 126.11 (3) (b) A statement of whether the applicant is an individual,
22 corporation, partnership, cooperative, unincorporated cooperative association,
23 limited liability company, trust, or other legal entity. If the applicant is a corporation
24 ~~or~~ a cooperative, or an association, the applicant shall identify each officer of the

ASSEMBLY BILL 1186**SECTION 43**

1 corporation or cooperative. If the applicant is a partnership, the applicant shall
2 identify each partner.

3 **SECTION 44.** 126.26 (2) (b) of the statutes is amended to read:

4 126.26 (2) (b) A statement of whether the applicant is an individual, a
5 corporation, a partnership, a cooperative, an unincorporated cooperative
6 association, a limited liability company, a trust, or other legal entity. If the applicant
7 is a corporation ~~or~~, a cooperative, or an association, the applicant shall identify each
8 officer of the corporation or cooperative. If the applicant is a partnership, the
9 applicant shall identify each partner.

10 **SECTION 45.** 126.41 (2) (b) of the statutes is amended to read:

11 126.41 (2) (b) A statement of whether the applicant is an individual, a
12 corporation, partnership, cooperative, unincorporated cooperative association,
13 limited liability company, trust, or other legal entity. If the applicant is a corporation
14 ~~or~~, a cooperative, or an association, the applicant shall identify each officer of the
15 corporation or cooperative. If the applicant is a partnership, the applicant shall
16 identify each partner.

17 **SECTION 46.** 126.56 (3) (b) of the statutes is amended to read:

18 126.56 (3) (b) A statement of whether the applicant is an individual, a
19 corporation, a partnership, a cooperative, an unincorporated cooperative
20 association, a limited liability company, a trust, or other legal entity. If the applicant
21 is a corporation ~~or~~, a cooperative, or an association, the application shall identify each
22 officer of the corporation or cooperative. If the applicant is a partnership, the
23 application shall identify each partner.

24 **SECTION 47.** 126.56 (9) (h) of the statutes is amended to read:

ASSEMBLY BILL 1186

1 126.56 (9) (h) Whether the applicant is a producer-owned cooperative or
2 unincorporated cooperative association or organization that procures vegetables
3 solely from its producer owners on the basis of a cooperative marketing method
4 under which the producer-owned cooperative, unincorporated cooperative
5 association, or organization pays its producer owners a prorated share of sales
6 proceeds for the marketing year after a final accounting and the deduction of
7 marketing expenses.

8 **SECTION 48.** 126.57 (1) (b) 2. of the statutes is amended to read:

9 126.57 (1) (b) 2. The vegetable contractor is a producer-owned cooperative or
10 unincorporated cooperative association or organization that procures processing
11 vegetables only from its producer owners.

12 **SECTION 49.** 126.58 (1) (c) 2. of the statutes is amended to read:

13 126.58 (1) (c) 2. The vegetable contractor is a producer-owned cooperative or
14 unincorporated cooperative association that procures processing vegetables only
15 from its producer owners.

16 **SECTION 50.** 126.59 (1) (c) of the statutes is amended to read:

17 126.59 (1) (c) The vegetable contractor is a producer-owned cooperative or
18 unincorporated cooperative association that procures processing vegetables only
19 from its producer owners.

20 **SECTION 51.** 126.61 (1) (c) 2. of the statutes is amended to read:

21 126.61 (1) (c) 2. The vegetable contractor is a producer-owned cooperative or
22 unincorporated cooperative association that procures processing vegetables only
23 from its producer members.

24 **SECTION 52.** 133.07 (1) of the statutes is amended to read:

ASSEMBLY BILL 1186**SECTION 52**

1 133.07 (1) This chapter shall not prohibit the existence and operation of labor,
2 agricultural or horticultural organizations, instituted for the purpose of mutual
3 help, and not having capital stock or conducted for profit, or organizations permitted
4 under ch. 185 or 193; shall not forbid or restrain individual members of such
5 organizations from lawfully carrying out the legitimate objects thereof; and such
6 organizations, or the members thereof, shall not be held or construed to be illegal
7 combinations or conspiracies in restraint of trade, under this chapter. The labor of
8 a human being is not a commodity or article of commerce.

9 **SECTION 53.** 133.09 of the statutes is amended to read:

10 **133.09 Collective bargaining.** This chapter shall be so construed as to
11 permit collective bargaining by associations of producers of agricultural products, by
12 organizations permitted under ch. 185 or 193 and by associations of employees when
13 such bargaining is actually and expressly done for the individual benefit of the
14 separate members of each such association making such collective bargain.

15 **SECTION 54.** 134.04 (1) of the statutes is amended to read:

16 134.04 (1) No person, firm or corporation engaged in any enterprise in this
17 state shall by any method or procedure directly or indirectly by itself or through a
18 subsidiary agency owned or controlled in whole or in part by such person, firm or
19 corporation, sell or procure for sale or have in its possession or under its control for
20 sale to its employees or any person any article, material, product or merchandise of
21 whatsoever nature not of the person's, firm's or corporation's production or not
22 handled in the person's, firm's or corporation's regular course of trade, excepting
23 meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of
24 such employees of the employer, and excepting tools used by employees in said
25 enterprise and such specialized appliances and paraphernalia as may be required in

ASSEMBLY BILL 1186

1 said enterprise for the employees' safety or health and articles used by employees or
2 other persons which insure better sanitary conditions and quality in the
3 manufacture of food or food products. The provisions of this subsection shall not
4 apply to lumber producers, loggers and dealers nor to any cooperative association
5 organized under ch. 185 or 193. This section shall not be construed as authorizing
6 the sale of any merchandise at less than cost as defined in s. 100.30.

7 **SECTION 55.** 136.01 (1) of the statutes is amended to read:

8 136.01 (1) "Contractor" means a person who offers for profit a future service
9 contract to a prospective customer, or who enters into a future service contract with
10 a customer, except a cooperative organized under ch. 185 or 193. Such person
11 includes, but is not limited to, an individual, partnership, limited liability company,
12 unincorporated association, or corporation. A "contractor" includes, but is not
13 limited to, buyers clubs, guilds, plans and guides.

14 **SECTION 56.** 177.015 of the statutes is amended to read:

15 **177.015 Exemption.** Notwithstanding this chapter, a cooperative organized
16 under ch. 185 or 193 may effect the forfeiture to the cooperative of unclaimed funds
17 as provided in ss. 185.03 (10) and, 185.75 (1), 193.301 (14), and 193.905 (4).

18 **SECTION 57.** 178.42 (3) (a) of the statutes is amended to read:

19 178.42 (3) (a) The name of any other domestic or foreign corporation,
20 cooperative, unincorporated cooperative association, registered limited liability
21 partnership, limited partnership, or limited liability company existing, registered or
22 licensed to transact business under the laws of this state.

23 **SECTION 58.** 178.42 (3) (b) of the statutes is amended to read:

24 178.42 (3) (b) Any name reserved or registered under ch. 179, 180, 181, 183 ~~or,~~
25 185, or 193.