

ASSEMBLY BILL 327**SECTION 82**

1 **SECTION 82.** 182.01 (3) (intro.) of the statutes is amended to read:

2 182.01 (3) NAME OF DRAFTER ON DOCUMENTS. (intro.) No articles of
3 incorporation, articles of organization, articles of amendment, articles of merger,
4 consolidation or share exchange, articles of dissolution, restated articles of
5 incorporation, certificate of abandonment, or statement or articles of revocation of
6 voluntary dissolution, provided for pursuant to ch. 180, 181, 183, 185 ~~or~~, 187, or 193;
7 no registration statement, amendment of a registration statement, or written notice
8 of withdrawal under s. 178.40; and no certificate of limited partnership, certificate
9 of amendment, restated certificate of limited partnership or certificate of
10 cancellation, provided for pursuant to ch. 179, shall be filed by the department unless
11 the name of the individual who, or the governmental agency which, drafted such
12 document is printed, typewritten, stamped or written thereon in a legible manner.
13 A document complies with this subsection if it contains a statement in the following
14 form: “This document was drafted by... (Name)”. This subsection shall not apply to
15 a document executed prior to December 1, 1967, or to:

16 **SECTION 83.** 182.017 (1) of the statutes is amended to read:

17 182.017 (1) RIGHT-OF-WAY FOR. Any domestic corporation organized to furnish
18 telegraph or telecommunications service or transmit heat, power or electric current
19 to the public or for public purposes, an independent system operator, as defined in
20 s. 196.485 (1) (d), an independent transmission owner, as defined in s. 196.485 (1)
21 (dm), or a cooperative association organized under ch. 185 or 193 to furnish telegraph
22 or telecommunications service or a cooperative organized under ch. 185 to transmit
23 heat, power or electric current to its members, may, subject to ss. 30.44 (3m), 30.45,
24 86.16 and 196.491 (3) (d) 3m. and to reasonable regulations made by any city, village
25 or town through which its transmission lines or systems may pass, construct and

ASSEMBLY BILL 327

1 maintain such lines or systems with all necessary appurtenances in, across or
2 beneath any public highway or bridge or any stream or body of water, or upon any
3 lands of any owner consenting thereto, and for such purpose may acquire lands or
4 the necessary easements; and may connect and operate its lines or system with other
5 lines or systems devoted to like business, within or without this state, and charge
6 reasonable rates for the transmission and delivery of messages or the furnishing of
7 heat, power or electric light.

8 **SECTION 84.** 182.025 (1) of the statutes is amended to read:

9 182.025 (1) Any domestic corporation formed to furnish water, heat, light,
10 power, telegraph or telecommunications service or signals by electricity may, subject
11 to the provisions of ch. 201 and by an affirmative vote of at least two-thirds of its
12 outstanding shares entitled to vote thereon, or any cooperative-association organized
13 under ch. 185 to furnish water, heat, light, or power, telegraph ~~or~~
14 ~~telecommunications service~~ or any cooperative organized under ch. 185 or 193 to
15 furnish telegraph or telecommunication service to its stockholders or members only
16 may, by a vote of a majority of a quorum of its stockholders or members present at
17 any regular or special meeting held upon due notice as to the purpose of the meeting
18 or when authorized by the written consent of the holders of a majority of its capital
19 stock outstanding and entitled to vote or of a majority of its members, mortgage or
20 trust deed any or all of the property, rights and privileges and franchises that it may
21 then own or thereafter acquire, to secure the payment of its bonds or notes to a fixed
22 amount or in amounts to be from time to time determined by the board of directors,
23 and may, in and by such mortgage or deed of trust, provide for the disposal of any of
24 its property and the substitution of other property in its place. Every such mortgage
25 or deed of trust may be recorded in the office of the register of deeds of the county in

ASSEMBLY BILL 327**SECTION 84**

1 which such corporation is located at the time of such recording, and such record shall
2 have the same effect as if the instrument were filed in the proper office as a chattel
3 mortgage or financing statement, and so remain until satisfied or discharged
4 without any further affidavit, continuation statement or proceeding whatever. For
5 this purpose the location of such corporation shall be deemed to be: as to a
6 corporation or a cooperative association not at the time subject to either s. 180.0501
7 ~~or~~, 185.08, or 193.115 (1), the location designated in its articles as then in effect; as
8 to a corporation subject to s. 180.0501, the location of its registered office; and as to
9 a cooperative association subject to s. 185.08 or 193.115 (1), the location of its
10 principal office or registered agent as designated thereunder.

11 **SECTION 85.** 183.0103 (2) (a) of the statutes is amended to read:

12 183.0103 (2) (a) The name of any other limited liability company, a corporation,
13 a nonstock corporation, a limited partnership, a limited liability partnership ~~or~~, a
14 cooperative association, or an unincorporated cooperative association existing under
15 the laws of this state.

16 **SECTION 86.** 183.0103 (2) (b) of the statutes is amended to read:

17 183.0103 (2) (b) The name of any foreign limited liability company, foreign
18 corporation, foreign nonstock corporation, foreign limited partnership, foreign
19 limited liability partnership ~~or~~, foreign cooperative association, or foreign
20 unincorporated cooperative association, or the designated, registered or fictitious
21 name under which any such entity is licensed to transact business in this state.

22 **SECTION 87.** 183.0103 (2) (c) of the statutes is amended to read:

23 183.0103 (2) (c) Any name reserved or registered under ch. 179, 180, 181 ~~or~~,
24 185, or 193.

25 **SECTION 88.** 183.0103 (4) (a) of the statutes is amended to read:

ASSEMBLY BILL 327**SECTION 89**

1 (4) “Articles” means the articles of organization of a cooperative.

2 (5) “Association” means an organization conducting business on a cooperative
3 plan under the laws of any state.

4 (6) “Board” means the board of directors of a cooperative.

5 (7) “Business entity” means a cooperative, corporation, limited liability
6 company, association, firm, or partnership operated for profit and organized under
7 a law other than a law of this state.

8 (9) “Cooperative” means an association organized under this chapter
9 conducting business on a cooperative plan as provided under this chapter.

10 (9m) “Department” means the department of financial institutions.

11 (10) “Domestic business entity” means a business entity organized under the
12 laws of this state.

13 (11m) “Electronic” means relating to technology having electrical, digital,
14 magnetic, wireless, optical, electromagnetic, or similar capabilities.

15 (11p) “Electronic signature” means an electronic sound, symbol, or process,
16 attached to or logically associated with a writing and executed or adopted by a person
17 with intent to authenticate the writing.

18 (12) “File with the department” means to deliver to the department a document
19 meeting the applicable requirements of this chapter, signed and accompanied by any
20 required filing fee.

21 (13) “Foreign business entity” means a business entity that is organized under
22 the laws of another state or the United States.

23 (14) “Foreign cooperative” means a foreign business entity organized to
24 conduct business on a cooperative plan consistent with this chapter or ch. 185.

ASSEMBLY BILL 327

1 (15) “Member” means a person reflected on the books of the cooperative as the
2 owner of governance rights of a membership interest of the cooperative. The term
3 includes patron and nonpatron members.

4 (16) “Membership interest” means a member’s interest in a cooperative,
5 consisting of a member’s financial rights, a member’s right to assign financial rights,
6 a member’s governance rights, and a member’s right to assign governance rights.
7 The term includes patron membership interests and nonpatron membership
8 interests.

9 (17) “Members’ meeting” means a regular or special members’ meeting.

10 (18) “Nonpatron member” means a member who holds a nonpatron
11 membership interest.

12 (19) “Nonpatron membership interest” means a membership interest that does
13 not require the holder to conduct patronage business for or with the cooperative to
14 receive financial rights or distributions.

15 (20) “Patron” means a person or entity who conducts patronage with the
16 cooperative.

17 (21) “Patronage” means transactions or services done for or with a cooperative
18 as defined by the cooperative.

19 (22) “Patron member” means a member holding a patron membership interest.

20 (23) “Patron membership interest” means a membership interest requiring the
21 holder to conduct patronage for or with the cooperative, as specified by the
22 cooperative, to receive financial rights or distributions.

23 (24) “Sign” means to execute or adopt a manual, facsimile, conformed, or
24 electronic signature or any symbol with intent to authenticate a writing and, with
25 respect to a document required under this chapter to be filed with the department,

ASSEMBLY BILL 327**SECTION 89**

1 with authority to do so under this chapter and under the articles, bylaws, or a
2 resolution approved by the directors or members.

3 (25) “Writing” means information that is inscribed on a tangible medium or
4 that is stored in an electronic or other intangible medium and is retrievable in
5 perceivable form.

6 **193.105 Use of term “cooperative” restricted.** (1) USE OF TERM
7 “COOPERATIVE” RESTRICTED. A business entity may not use the term “cooperative” as
8 part of its business name or title or represent itself as a cooperative, in this state,
9 unless the business entity is a cooperative or foreign cooperative or is organized
10 under ch. 185.

11 (2) PENALTY FOR MISUSE OF TERM “COOPERATIVE.” A business entity that violates
12 sub. (1) may be fined not more than \$250. Each day of improper use constitutes a
13 separate offense.

14 **193.111 Filing fees and other requirements.** (1) Except as provided under
15 sub. (2), the department shall charge and collect for:

16 (a) Filing articles for a new cooperative, \$25, if the new cooperative is organized
17 with no capital stock. If the new cooperative is organized with capital stock, the
18 department may charge \$1.25 for each \$1,000 of capital stock, or \$25, whichever is
19 greater.

20 (b) Filing an amendment to or restatement of the articles or articles of
21 consolidation or division, \$25, except that no fee may be collected for any of the
22 following:

23 1. An amendment showing only a change of address resulting from the action
24 of a governmental agency if there is no corresponding change in physical location and
25 if 2 copies of the notice of the action are submitted to the department.

ASSEMBLY BILL 327

1 2. An amendment or statement filed to reflect only a change in the name of a
2 registered agent.

3 (c) Filing articles of merger, \$30.

4 (d) Filing articles or decree of dissolution, \$5.

5 (e) Receiving service of any process, notice, or demand, authorized to be served
6 on the department by this chapter, an amount equal to the fee established under s.
7 182.01 (4) (c).

8 (g) Filing a report of names and addresses of officers or directors, \$3.

9 (h) Processing in an expeditious manner a document required or permitted to
10 be filed or recorded under this chapter, an amount equal to the fee established under
11 s. 182.01 (4) (d), in addition to the fee required by other provisions of this chapter.

12 (2) The department, by rule, may specify a larger fee for filing documents
13 described in sub. (1) in paper format.

14 (3) No document may be filed or recorded until all fees for the document have
15 been paid.

16 (4) The department shall endorse on any document filed with the department
17 the word “filed” or a similar word determined by the department and the month, day,
18 and year of filing, record the document in the office of the department, and return
19 the document to the person or entity who delivered it for filing.

20 **193.115 Registered office and agent.** (1) REGISTERED OFFICE AND AGENT
21 REQUIRED. A cooperative shall establish and continuously maintain in this state all
22 of the following:

23 (a) A registered office which may be, but need not be, the same as the
24 cooperative’s place of business.

ASSEMBLY BILL 327**SECTION 89**

1 (b) A registered agent, which agent may be an individual resident of this state
2 whose business office is identical to the registered office, a domestic business entity,
3 or a foreign business entity authorized to transact business in this state, having an
4 office identical to the registered office.

5 (2) DESIGNATION OF INITIAL OFFICE AND AGENT. The organizers of a cooperative
6 shall designate the cooperative's initial registered office and agent by filing with the
7 department, along with the original articles of organization under s. 193.215 (1), a
8 statement setting forth all of the following:

9 (a) The name of the cooperative.

10 (b) The address of its registered office.

11 (c) The name of its registered agent.

12 (d) That the address of its registered office and the address of the business office
13 of its registered agent are identical.

14 (2m) CHANGE OF OFFICE AND AGENT. Except as provided in sub. (5), a cooperative
15 may change its registered office or agent by filing with the department a statement
16 setting forth all of the following:

17 (a) The name of the cooperative.

18 (b) The address of its then registered office.

19 (c) If the address of its registered office is to be changed, the address to which
20 the registered office is to be changed.

21 (d) The name of its then registered agent.

22 (e) If its registered agent is to be changed, the name of its successor registered
23 agent.

24 (f) That the address of its registered office and the address of the business office
25 of its registered agent, as changed, will be identical.

ASSEMBLY BILL 327

1 (g) That any change was authorized by affirmative vote of a majority of the
2 board.

3 (3) DUTIES OF DEPARTMENT; EFFECTIVE DATE OF CHANGE. Upon receipt of a
4 statement delivered under sub. (2) or (2m), the department shall examine the
5 statement to ensure that it conforms to the applicable requirements of this section.
6 If the department finds that the statement conforms to the applicable requirements
7 of this section, the department shall file the statement. Any change designated in
8 a statement delivered under sub. (2m) takes effect upon filing of the statement by the
9 department.

10 (4) RESIGNATION OF AGENT. Any registered agent of a cooperative may resign
11 as agent by filing with the department a written notice of resignation, together with
12 one exact or conformed copy. The department shall mail a copy of the notice to the
13 cooperative at its principal mailing address as determined by the department. The
14 resignation takes effect on the first day of the 2nd month beginning after receipt of
15 the notice by the department.

16 (5) CHANGE OF ADDRESS OR NAME OF AGENT. If the address or name of a
17 registered agent changes, the agent shall change the address of the registered office
18 or the name of the registered agent, as applicable, of the cooperative that appointed
19 the agent by filing with the department the statement required under sub. (2m),
20 except that the statement need only be signed by the registered agent, need not
21 satisfy sub. (2m) (e) or (g), and shall state that a copy of the statement has been
22 mailed to the cooperative or to the legal representative of the cooperative.

23 **193.121 Legal recognition of electronic records and signatures.** For the
24 purpose of satisfying 15 USC 7002 (a) (2) (B) as that statute relates to this chapter,

1 this state acknowledges the existence of the Electronic Signatures in Global and
2 National Commerce Act, 15 USC 7001 to 7031.

3 SUBCHAPTER II

4 ORGANIZATION

5 **193.201 Organizational purpose.** Except as provided in s. 193.203, a
6 cooperative may be formed and organized on a cooperative plan for patrons as
7 provided under this chapter for any of the following purposes:

8 (1) To market, process, or otherwise change the form or marketability of
9 products, including crops, livestock, and other agricultural products; to manufacture
10 products; to accomplish other purposes that are necessary or convenient to facilitate
11 the production or marketing of products by patron members and others; and to
12 accomplish other purposes that are related to the business of the cooperative.

13 (2) To provide products, supplies, and services to its members.

14 (3) To accomplish any other lawful purpose.

15 **193.203 Exceptions.** No cooperative may be organized under this chapter for
16 the purpose of furnishing natural gas, heat, light, power, or water to its members.

17 **193.205 Organizers.** (1) **QUALIFICATION.** A cooperative may be organized by
18 one or more organizers who shall be individuals over the age of 18, who may act for
19 themselves as individuals or as the agents of other entities. The organizers forming
20 the cooperative need not be members of the cooperative.

21 (2) **ROLE OF ORGANIZERS.** If the cooperative's initial board is not named in the
22 articles, the organizers may elect the initial board or may act as directors with all of
23 the powers, rights, duties, and liabilities of directors, until the board is elected or
24 until a contribution is accepted, whichever occurs first.

ASSEMBLY BILL 327

1 **(3) MEETING OR WRITTEN ACTION.** After the articles are filed, the organizers or
2 the board named in the articles, as applicable, shall hold an organizational meeting
3 at the call of a majority of the organizers or of the board, as applicable, or take written
4 action for the purposes of transacting business and taking actions appropriate to
5 complete the organization of the cooperative. If a meeting is held under this
6 subsection, the person or persons calling the meeting shall give at least 3 days prior
7 notice of the meeting to each organizer or director, as applicable, stating the date,
8 time, and place of the meeting. An organizer or director may waive notice of an
9 organizational meeting in the same manner that a director may waive notice of
10 meetings of the board.

11 **193.211 Cooperative name. (1) DISTINGUISHABLE NAME.** The name of a
12 cooperative shall distinguish the cooperative upon the records of the department
13 from the name of all business entities authorized to do business in this state and all
14 names the right to which are, at the time of organization, reserved or provided for
15 by law.

16 **(2) RESERVATION; CONTEST OF NAME.** A cooperative's name is reserved for use by
17 the cooperative during the cooperative's existence, except that a person doing
18 business in this state may contest the cooperative's use of the name as provided by
19 law.

20 **193.215 Articles of organization and notice of mailing address. (1)**
21 **FILING REQUIRED.** The organizers of a cooperative shall file with the department the
22 cooperative's original articles as specified under sub. (2), together with the statement
23 required under s. 193.115 (2) and a statement listing the current mailing address of
24 the cooperative.

25 **(2) CONTENT OF ARTICLES. (a)** The articles shall state all of the following:

ASSEMBLY BILL 327**SECTION 89**

- 1 1. The name of the cooperative.
- 2 2. The purpose of the cooperative.
- 3 3. The name and address of each organizer.
- 4 4. The duration of the cooperative, if the duration is not to be perpetual.

5 (b) The articles may contain any other lawful provision.

6 **(3) EFFECT OF PROPER FILING.** Upon compliance with sub. (1), all of the following
7 apply:

8 (a) It is presumed that all conditions precedent to organizing the cooperative
9 that are required to be performed by the organizers have been satisfied.

10 (b) The cooperative is chartered by this state as a separate legal entity with
11 perpetual duration or any other duration stated in the articles under sub. (2) (a) 4.

12 (c) The department shall issue a certificate of organization to the cooperative.

13 **(4) CHANGE OF MAILING ADDRESS.** If the mailing address of the cooperative
14 changes, the cooperative shall file with the department a statement notifying the
15 department of the change of address.

16 **193.221 Amendment of articles. (1) PROCEDURE.** (a) Except as provided
17 under sub. (3), the articles of a cooperative may be amended as follows:

18 1. The board by majority vote may adopt a resolution stating the text of the
19 proposed amendment. The text of the proposed amendment and, if approved by the
20 board, an attached mail or alternative ballot, shall be mailed or otherwise
21 distributed with any regular or special meeting notice to each member. The notice
22 shall designate the time and place of the meeting at which the proposed amendment
23 will be considered and voted on.

ASSEMBLY BILL 327

1 2. If a quorum of the members is registered as being present or represented by
2 alternative vote at the meeting specified in the notice under subd. 1., the proposed
3 amendment may be adopted by the following means, as applicable:

4 a. By a majority of the votes cast.

5 b. For a cooperative with articles or bylaws requiring more than majority
6 approval or other conditions for approval, by a sufficient vote as required under the
7 articles or bylaws or by satisfying the other conditions for approval.

8 (b) The articles may be amended as restated articles using the procedure under
9 par. (a). If restated articles are adopted, the restated articles supercede all prior
10 articles and amendments to the articles.

11 (c) After an amendment or restated articles are adopted under par. (a) or (b),
12 the chair, vice-chair, records officer, or assistant records officer of the cooperative
13 shall sign the amendment or restated articles and promptly file a copy with the
14 department.

15 **(2) CERTIFICATE.** (a) If an amendment or restated articles are adopted under
16 sub. (1), the board shall prepare a certificate containing all of the following:

17 1. A statement listing the date of the meeting at which the board adopted the
18 resolution concerning the proposed amendment under sub. (1) (a) 1. or the restated
19 articles and the vote of the board.

20 2. A copy of the notice provided to members under sub. (1) (a) 1.

21 3. A listing of the quorum registered at the meeting under sub. (1) (a) 2.

22 4. A listing of the votes cast adopting the amendment or the restated articles
23 at the meeting under sub. (1) (a) 2.

24 (b) The chair, vice-chair, records officer, or financial officer of the cooperative
25 shall sign the certificate and file the certificate with the records of the cooperative.

ASSEMBLY BILL 327**SECTION 89**

1 **(3) AMENDMENT BY DIRECTORS.** A majority of directors may, by resolution, amend
2 the articles if the cooperative does not have any members with voting rights. The
3 board shall promptly file an amendment under this subsection with the department.

4 **(4) EFFECTIVE DATE OF AMENDMENT.** An amendment or restated articles adopted
5 under sub. (1) or an amendment adopted under sub. (3) is effective on the date
6 specified in the resolution adopted under sub. (1) (a) 1. or (3), as applicable, or, if no
7 such date is specified, upon the filing of the amendment or restated articles with the
8 department.

9 **193.225 Conversion to cooperative. (1) AUTHORITY AND NOTICE.** A business
10 entity other than an cooperative may become a cooperative by following the
11 applicable procedure under sub. (2) or (3). A business entity shall provide its
12 members with a disclosure statement listing the rights and obligations of the
13 members and the capital structure of the proposed cooperative before making a
14 conversion under this section.

15 **(2) PROCEDURE FOR ENTITIES ORGANIZED IN THIS STATE.** A business entity
16 organized under the laws of this state, other than a cooperative, that elects to make
17 a conversion as provided under sub. (1) shall amend its organizational documents in
18 the manner provided under the laws that govern the business entity. The business
19 entity shall file with the department amended articles of organization that comply
20 with s. 193.215. Upon the filing of the amended articles of organization, the business
21 entity is converted to a cooperative and is governed by the applicable provisions of
22 this chapter.

23 **(3) PROCEDURE FOR ENTITIES ORGANIZED IN OTHER STATES.** A business entity
24 organized under the laws of another state that elects to make a conversion as
25 provided under sub. (1) shall amend its organizational documents in the manner

ASSEMBLY BILL 327

1 provided under the other state's laws that govern the business entity. The business
2 entity shall file with the department amended articles of organization that comply
3 with s. 193.215. Upon the filing of the amended articles of organization, the business
4 entity is converted to a cooperative and is governed by the applicable provisions of
5 this chapter.

6 (4) CONVERSION OF COOPERATIVES ORGANIZED UNDER CHAPTER 185. A cooperative
7 that is organized under ch. 185 may not convert to a cooperative organized under this
8 chapter regardless of whether the conversion is accomplished directly within
9 Wisconsin or indirectly through or with any out-of-state entity.

10 **193.231 Curative filing.** If the department determines that a cooperative has
11 made an erroneous filing under this chapter, the department may revoke and
12 expunge the erroneous filing and authorize a curative document to be filed. The
13 department shall charge the cooperative a filing fee of \$500 for any such revocation,
14 expungement, and subsequent curative filing.

15 **193.241 Bylaws. (1) REQUIRED.** A cooperative shall have bylaws governing
16 the cooperative's business affairs and structure, the qualifications, classification,
17 rights, and obligations of members, and the classifications, allocations, and
18 distributions of membership interests which are not otherwise provided in the
19 articles or by this chapter.

20 (2) CONTENTS. The bylaws may contain any provision relating to the
21 management or regulation of the affairs of the cooperative that is not inconsistent
22 with applicable law or the articles and, if not stated in the articles, the bylaws shall
23 include all of the following:

24 (a) A description of the capital structure of the cooperative, including a
25 statement of the classes and relative rights, preferences, and restrictions granted to

ASSEMBLY BILL 327**SECTION 89**

1 or imposed upon each class of member interests, the rights to share in profits or
2 distributions of the cooperative, and the authority to issue member interests and, if
3 applicable, a statement that the board may establish a class or series of member
4 interests, set forth the designation of the class or series, and fix the relative rights
5 and preferences of the class or series.

6 (b) A provision designating voting and governance rights, including which
7 membership interests have voting power and any limitations or restrictions on the
8 voting power, which shall be in accordance with the provisions of this chapter.

9 (c) A statement that patron membership interests with voting power are
10 restricted to one vote for each member regardless of the amount of patron
11 membership interests held in the affairs of the cooperative or a statement describing
12 the allocation of voting power as prescribed in this chapter.

13 (d) A statement that membership interests held by a member are transferable
14 only with the approval of the board or a statement otherwise describing the manner
15 in which membership interests may be transferred consistent with this chapter.

16 (e) If nonpatron membership interests are authorized, a statement as to how
17 profits and losses will be allocated and cash will be distributed between patron
18 membership interests collectively and nonpatron membership interests collectively,
19 a statement that net income allocated to patron membership interests as determined
20 by the board in excess of dividends and additions to reserves shall be distributed on
21 the basis of patronage, and a statement that the records of the cooperative shall
22 include the interests of patron membership interests and, if authorized, nonpatron
23 membership interests in any classes of interests and in the reserves.

24 (f) A statement of the number of directors; the qualifications, manner of
25 election, powers, and duties of directors; and the manner in which any compensation

ASSEMBLY BILL 327

1 of directors is determined. Provisions included in the bylaws under this paragraph
2 shall be consistent with subch. IV.

3 (g) A statement of the qualifications of members and any limitations on their
4 number.

5 (h) A description of the methods of admission, withdrawal, suspension, and
6 expulsion of members.

7 (i) A general description of members' governance rights and financial rights,
8 assignability of governance and financial rights, and other rights, privileges, and
9 obligations of members and their membership interests, which may be further
10 described in member control agreements.

11 (j) Any provisions required by the articles to be in the bylaws.

12 **(3) ADOPTION AND AMENDMENT; NOTICE.** (a) Bylaws shall be adopted prior to any
13 distributions to members, but if the articles provide that rights of contributors to a
14 class of membership interest will be determined in the bylaws, then the bylaws shall
15 be adopted prior to the acceptance of any contributions to that class.

16 (b) Subject to subs. (4), (5), and (6), the bylaws may be adopted or amended by
17 the board or, if all of the following apply, the members may adopt or amend bylaws
18 at a regular or special members' meeting:

19 1. The notice of the meeting contains a statement that the bylaws or
20 amendments will be voted upon, a statement summarizing the proposed bylaws or
21 amendments, and either copies of the bylaws or amendments or a statement that
22 copies of the bylaws or amendments are available from the cooperative upon request.

23 2. A quorum of the members is registered as being present or represented by
24 alternative vote at the meeting.

ASSEMBLY BILL 327**SECTION 89**

1 3. The bylaws or amendments are approved by the following means, as
2 applicable:

3 a. By a majority of the votes cast.

4 b. For a cooperative with articles or bylaws requiring more than majority
5 approval or other conditions for approval, by a sufficient vote as required under the
6 articles or bylaws or by satisfying the other conditions for approval.

7 (c) The members may amend the bylaws even though the bylaws may also be
8 amended by the board. The board may amend the bylaws even though the bylaws
9 may also be amended by the members.

10 (d) The board shall distribute to the members any amendment to the bylaws
11 adopted by the board no later than the 10th day after adoption and the notice of the
12 next regular members' meeting occurring after adoption shall contain a notice and
13 summary of, or a copy of, the amendment.

14 **(4) LIMITATION ON BOARD'S AMENDMENT AUTHORITY.** The board may not amend the
15 bylaws if any of the following apply:

16 (a) This chapter, the articles, or the bylaws reserve the power exclusively to the
17 members.

18 (b) The articles or bylaws expressly prohibit the board from doing so.

19 (c) The amendment would fix a greater quorum or voting requirement for
20 members or voting groups of members or would amend a provision adopted by
21 amendment under sub. (5).

22 **(5) AMENDMENT TO CHANGE QUORUM OR VOTING REQUIREMENTS FOR MEMBERS.** The
23 members may amend the bylaws to specify a greater quorum requirement for
24 members, or voting groups of members, or a greater number of votes or members
25 participating required for approval than is otherwise required by this chapter. An

ASSEMBLY BILL 327

1 amendment to the bylaws to add, change, or delete such a quorum or voting
2 requirement shall meet the same quorum requirement and be adopted by the same
3 vote and voting groups required to take action under the quorum and voting
4 requirements then in effect or proposed to be adopted, whichever are more stringent.

5 **(6) AMENDMENT TO CHANGE QUORUM OR VOTING REQUIREMENTS FOR DIRECTORS.** (a)
6 A bylaw that specifies a greater quorum requirement for the board or a greater
7 number of votes or directors participating required for approval than is otherwise
8 required by this chapter may be amended as follows:

- 9 1. If the bylaw was originally adopted by the members, only by the members.
- 10 2. If the bylaw was originally adopted by the board, by the members or by the
11 board.

12 (b) A bylaw, or amendment to the bylaws, adopted by the members that
13 specifies a greater quorum or voting requirement for the board as described in par.
14 (a) may provide that it may be subsequently amended only by a specified vote of
15 either the members or the board, but if the bylaw or amendment so provides, the
16 bylaw or amendment shall be originally adopted by the specified vote of the members
17 proposed in the bylaw or amendment.

18 (c) Action by the board under par. (a) 2. shall meet the same quorum
19 requirement and be adopted by the same vote required to take action under the
20 quorum and voting requirement then in effect or proposed to be adopted, whichever
21 is more stringent.

22 **(7) EMERGENCY BYLAWS.** (a) Unless otherwise provided in the articles or bylaws,
23 the board may adopt emergency bylaws which take effect only during an emergency
24 as defined in par. (d). The emergency bylaws, which are subject to amendment or

ASSEMBLY BILL 327**SECTION 89**

1 repeal by the members, may include all provisions necessary for managing the
2 cooperative during an emergency, including any of the following:

- 3 1. Procedures for calling a meeting of the board.
- 4 2. Quorum requirements for the meeting.
- 5 3. Designation of additional or substitute directors.

6 (b) All provisions of the regular bylaws consistent with the emergency bylaws
7 remain in effect during any emergency.

8 (c) Action taken in good faith in accordance with the emergency bylaws:

- 9 1. Binds the cooperative.
- 10 2. May not be the basis for imposition of liability on any director, officer,
11 employee, or agent of the cooperative on the ground that the action was not
12 authorized cooperative action.

13 (d) An emergency exists for the purposes of this section if a quorum of the
14 directors cannot readily be obtained because of a catastrophic event.

15 **193.245 Cooperative records.** (1) A cooperative shall keep as permanent
16 records minutes of all meetings of its members and of the board, a record of all actions
17 taken by the members or the board without a meeting by a written unanimous
18 consent in lieu of a meeting, and a record of all waivers of notices of meetings of the
19 members and of the board.

20 (2) A cooperative shall maintain appropriate accounting records.

21 (3) A cooperative shall keep a copy of each of the following records at its
22 principal office:

- 23 (a) Its articles, bylaws, and other governing instruments.

ASSEMBLY BILL 327

1 (c) A record of the names and addresses of its members, in a form that allows
2 preparation of a list of members that is alphabetical and that shows each member's
3 address.

4 (d) The minutes of members' meetings and records of all actions taken by
5 members without a meeting by unanimous written consent in lieu of a meeting, for
6 the past 3 years.

7 (e) All written communications within the past 3 years to members as a group
8 or to any class of members as a group.

9 (f) A list of the names and business addresses of its current directors and
10 officers.

11 (g) All financial statements prepared for periods ending during the last fiscal
12 year.

13 (4) A cooperative shall maintain its records in written form or in another form
14 capable of conversion into written form within a reasonable time.

15 (5) Except as otherwise provided under this section, the board may determine
16 what records are appropriate for the purposes of the cooperative, the length of time
17 records are to be retained, and, subject to s. 193.501 (4), policies relating to the
18 confidentiality, disclosure, inspection and copying of the records of the cooperative.
19 This subsection does not permit the board to withhold documents that are otherwise
20 required to be disclosed by law.

21 **SUBCHAPTER III**

22 **COOPERATIVE POWERS**

23 **193.301 Cooperative powers. (1) GENERALLY.** In addition to other powers,
24 a cooperative may perform every act necessary or proper to the conduct of the
25 cooperative's business or the accomplishment of the purposes of the cooperative. A

ASSEMBLY BILL 327**SECTION 89**

1 cooperative has all rights, powers, and privileges granted to entities organized under
2 ch. 185, except those that are inconsistent with an express provision of this chapter.

3 (2) DEALING IN PRODUCTS. A cooperative may buy, sell, or deal in its own
4 products or the products of any other person and may negotiate the sales price of any
5 product the cooperative sells.

6 (3) CONTRACTS WITH MEMBERS. A cooperative may enter into or become a party
7 to a contract for the cooperative or for the cooperative's individual members or
8 patrons or between the cooperative and its members.

9 (4) ACTS CONCERNING REAL AND PERSONAL PROPERTY. (a) A cooperative may
10 acquire and hold, lease, mortgage, encumber, sell, exchange and convey real and
11 personal property as the business of the cooperative may require.

12 (b) A cooperative may act as trustee or in any fiduciary capacity for any purpose
13 not inconsistent with the purposes of the cooperative, subject to any applicable
14 requirements of s. 223.105.

15 (6) DEBT INSTRUMENTS, BORROWING, SECURITY, AND INVESTING. A cooperative may
16 do any of the following:

17 (a) Issue bonds, debentures, or other evidence of indebtedness.

18 (b) Borrow money to finance the business of the cooperative.

19 (c) Secure any of its obligations by mortgage of, creation of a security interest
20 in, or other encumbrance or assignment of all or any of its property, franchises, or
21 income.

22 (d) Form special purpose business entities to secure assets of the cooperative.

23 (e) Invest its funds.

24 (f) Acquire, hold, and dispose of evidences of indebtedness of any business
25 entity.

ASSEMBLY BILL 327

1 (7) ADVANCES TO PATRONS. A cooperative may make advances to the
2 cooperative's members or patrons on products delivered by the members or patrons
3 to the cooperative.

4 (8) DONATIONS. A cooperative may accept donations of money and donations of
5 real or personal property from its members.

6 (9) LENDING TO AND BORROWING FROM MEMBERS. A cooperative may loan money
7 to its members with security that it considers sufficient, whether or not any property
8 taken as security is of the kind dealt in by the cooperative, and may borrow money
9 from its members.

10 (10) PENSIONS AND BENEFITS. (a) A cooperative may pay pensions, retirement
11 benefits, and compensation for past services to or for the benefit of the cooperative.

12 (b) A cooperative may establish and carry out employee benefit plans and
13 provisions for the benefit of any or all of its and its affiliates, officers, managers,
14 directors, governors, employees, and agents. In the case of an affiliate that is a
15 cooperative, a cooperative may establish and carry out provisions for the benefit of
16 the affiliate's members who provide services to the cooperative, and the families,
17 dependents, and beneficiaries of any of them. A cooperative may indemnify a
18 fiduciary of any employee benefit plan or provisions established under this
19 paragraph and purchase insurance for or on behalf of such a fiduciary.

20 (11) INSURANCE. A cooperative may purchase for its benefit life insurance and
21 other insurance with respect to the services of any of its members, managers,
22 directors, employees, and agents, and may purchase insurance on the life of a
23 member for the purpose of facilitating the cooperative's acquisition of any of the
24 member's membership interests in the cooperative at the death of the member.

ASSEMBLY BILL 327**SECTION 89**

1 **(12) OWNERSHIP INTERESTS IN OTHER ENTITIES.** (a) A cooperative may acquire,
2 hold, or dispose of ownership interests in another business entity and, if a
3 cooperative acquires ownership interests under this paragraph, assume all rights,
4 interests, privileges, responsibilities, and obligations arising out of the ownership
5 interests. A cooperative that holds an ownership interest in another business entity
6 may, by direction of the board, elect or appoint an individual to represent the
7 cooperative at a meeting of the business entity. The representative may represent
8 the cooperative at such a meeting and may cast any vote the cooperative is entitled
9 to cast at the meeting.

10 (b) A cooperative may organize business entities.

11 (c) A cooperative may acquire ownership interests in or organize an entity to
12 which any of the following apply:

13 1. The entity is organized as a federation of associations.

14 2. The entity is organized for the purpose of forming a district, state, or national
15 marketing, sales, or service agency.

16 3. The entity is organized for the purpose of acquiring marketing facilities at
17 terminal or other markets in this state or other states.

18 **(14) FORFEITURE.** (a) Notwithstanding ch. 177, a cooperative may effect the
19 forfeiture to the cooperative of unclaimed allocations, distributions, or credits under
20 this chapter or under s. 185.45 (2) (b) and (c), (3) (a) and (b), and (4) (b), unclaimed
21 stock issued by the cooperative, and unclaimed deposits held by the cooperative, if
22 all of the following conditions are met:

23 1. No earlier than 3 years and no later than 5 years after the allocation,
24 distribution, or credit is first made available to its owner, the board declares that the
25 allocation, distribution, or credit will be forfeited to the cooperative unless claimed

ASSEMBLY BILL 327

1 by a date determined by the board, which date shall be a business day at least 60 days
2 after the date of mailing under subd. 2.

3 2. The cooperative mails a written notice of the declaration under subd. 1. to
4 the owner of the allocation, distribution, or credit at the owner's last-known address,
5 as reflected in the records of the cooperative.

6 3. The cooperative publishes the notice under subd. 2. as a class 1 notice under
7 ch. 985, on or before the date on which the notice is mailed, in a newspaper published
8 in a municipality having territory within the service area of the cooperative.

9 4. The allocation, distribution, or credit remains unclaimed after the date
10 determined by the board under subd. 1.

11 (b) A cooperative that effects a forfeiture under par. (a) shall use any forfeited
12 moneys within one year after the date on which the funds are forfeited for providing
13 scholarships or educational loans to students or for charitable purposes, as
14 determined by the board.

15 (c) Property forfeited under this subsection is not subject to ch. 177.

16 **193.305 Emergency powers.** (1) In anticipation of or during an emergency,
17 as defined in sub. (4), the board may do any of the following:

18 (a) Modify lines of succession to accommodate the incapacity of any director,
19 officer, employee, or agent.

20 (b) Relocate the principal office, designate alternative principal offices or
21 regional offices, or authorize the officers to do so.

22 (2) All of the following apply during an emergency, as defined in sub. (4), unless
23 emergency bylaws under s. 193.241 (7) provide otherwise:

24 (a) Notice of a meeting of the board need be given only to those directors whom
25 it is practicable to reach and may be given in any practicable manner.

ASSEMBLY BILL 327**SECTION 89**

1 (b) One or more officers of the cooperative present at a meeting of the board may
2 be deemed to be directors for the meeting, in order of rank and within the same rank
3 in order of seniority, as necessary to achieve a quorum.

4 (3) Action taken in good faith during an emergency under this section to further
5 the ordinary business affairs of the cooperative:

6 (a) Binds the cooperative.

7 (b) May not be the basis for the imposition of liability on any director, officer,
8 employee, or agent of the cooperative on the ground that the action was not
9 authorized cooperative action.

10 (4) An emergency exists for purposes of this section if a quorum of the directors
11 cannot readily be obtained because of a catastrophic event.

12 **193.311 Agricultural product and commodity marketing contracts. (1)**

13 AUTHORITY. A cooperative and its patron member or patron may enter into a
14 marketing contract, requiring the patron member or patron to sell a specified portion
15 of the patron member's or patron's agricultural product or specified commodity
16 produced from a specified area exclusively to or through the cooperative or a facility
17 established by the cooperative.

18 (2) TITLE TO PRODUCTS. If an agricultural product or commodity is sold to a
19 cooperative under a contract under sub. (1), the sale transfers title to the product or
20 commodity absolutely, subject to any valid lien or security interest in the product or
21 commodity, to the cooperative on delivery of the product or commodity or at another
22 time specified in the contract. A contract under sub. (1) may allow a cooperative to
23 sell agricultural products or commodities with or without taking title to the products
24 or commodities, and pay the sales price to the applicable patron member or patron,
25 after deducting amounts specified in the contract.

ASSEMBLY BILL 327

1 **(3) TERM OF CONTRACT.** The term of a contract under sub. (1) may not exceed 10
2 years, except that a contract may be renewed for periods not exceeding 5 years each,
3 subject to the right of either party to immediately terminate the contract by giving
4 written notice of the termination to the other party.

5 **(4) LIQUIDATED DAMAGES FOR BREACH OF CONTRACT.** A contract under sub. (1) may
6 require the patron member or patron to pay an amount to the cooperative as
7 liquidated damages for the patron member's or patron's breach of any provision of
8 the contract regarding the sale, delivery, or withholding of a product or commodity.
9 The amount of liquidated damages shall be specified by including the specified
10 amount in the contract.

11 **(5) INJUNCTION AGAINST BREACH OF CONTRACT.** If a patron member or patron
12 breaches or threatens to breach a contract under sub. (1), the cooperative may
13 commence an action for specific performance and injunctive relief under ch. 813.

14 **(6) CRIMINAL PENALTY FOR CONTRACT INTERFERENCE AND FALSE REPORTS.** (a) No
15 person may knowingly induce or attempt to induce a patron member or patron of a
16 cooperative to breach a contract under sub. (1).

17 (b) No person may maliciously and knowingly publish false reports about the
18 finances or management of a cooperative.

19 (c) Any person who violates par. (a) or (b) may be fined not more than \$1,000
20 or imprisoned for not more than 6 months, or both.

21 **(7) CIVIL LIABILITY FOR CONTRACT INTERFERENCE AND FALSE REPORTS.** In addition
22 to the penalty provided in sub. (6) (c), any person who violates sub. (6) (a) or (b) may
23 be liable to the cooperative for damages caused by the violation.

ASSEMBLY BILL 327

1 in the articles or bylaws. The patron members may also elect an outside director who
2 is an expert in financial matters but who has no financial interest in the cooperative.
3 Unless the articles or bylaws provide otherwise, the outside director may not vote.

4 (d) A director holds office for the term for which the director was elected and
5 until a successor is elected and has qualified, unless the director is removed or a
6 vacancy in the office of the director occurs.

7 (g) Directors may be divided into, designated, and elected by class or other
8 distinction as provided in the articles or bylaws.

9 (3) ELECTION AT REGULAR MEETING. Except as provided under sub. (1) or (4) or
10 s. 193.415 (4) or 193.421, all directors shall be elected at the regular members'
11 meeting.

12 (4) DISTRICT OR LOCAL UNIT ELECTION OF DIRECTORS. For a cooperative with
13 districts or other units, directors may be elected by members on a district or unit
14 basis if the articles or bylaws so provide. Directors elected on a district or unit basis
15 may be nominated or elected at district member meetings if the articles or bylaws so
16 provide. Directors who are nominated at district meetings shall be elected at the
17 regular members' meeting by vote of the entire membership, unless the articles or
18 bylaws provide that such directors are to be elected at a district member meeting or
19 the regular members' meeting by vote of the members of the district.

20 (4m) CUMULATIVE VOTING. Unless the articles or bylaws so provide, directors
21 may not be elected through the use of any system of voting that permits a voter to
22 allocate multiple votes among eligible candidates.

23 (5) BALLOTS. All of the following apply to voting under this section:

24 (a) A member may vote only by casting a ballot as provided under s. 193.545

25 (3).

ASSEMBLY BILL 327**SECTION 89**

1 (b) The ballot shall be in a form prescribed by the board.

2 (c) To cast a ballot by mail, a member shall mark the ballot for the candidate
3 chosen, seal the ballot in a plain envelope bearing the member's name and the words
4 "BALLOT ENCLOSED," or similar words, and enclose that envelope in another
5 envelope addressed to the cooperative. To cast an alternative ballot, a member shall
6 follow the procedure prescribed by the board.

7 (d) If the ballot of the member is received by the cooperative on or before the
8 date of the election, or as otherwise prescribed for alternative ballots, and if all other
9 applicable requirements are satisfied the cooperative shall accept and count the
10 ballot as the vote of the absent member.

11 **(6) BUSINESS ENTITY MEMBERS MAY NOMINATE PERSONS FOR DIRECTOR.** Any member
12 that is not an individual may nominate one or more individuals as candidates for
13 election as a director of the cooperative, unless the cooperative's articles or bylaws
14 provide otherwise.

15 **(9) COMPENSATION.** Subject to any limitation in the articles or bylaws, the board
16 may fix the compensation of the directors, except that any outside director elected
17 under sub. (2) (b) may not receive any compensation other than authorized per diem
18 reimbursements.

19 **193.415 Removal of directors.** All of the following apply, unless the articles
20 or bylaws provide otherwise:

21 **(2) REMOVAL OF TEMPORARY DIRECTORS BY BOARD.** A director who was appointed
22 by the board to fill a vacancy may be removed by the board at any time, with or
23 without cause, if all of the following apply:

24 (a) The members have not elected directors in the interval between the time
25 of the appointment to fill the vacancy and the time of the removal.

ASSEMBLY BILL 327

1 (b) A majority of the remaining directors present affirmatively vote to remove
2 the director.

3 (3) REMOVAL OF DIRECTORS BY MEMBERS. A director may be removed at any time,
4 with or without cause, by the affirmative vote of the holders of a majority of the voting
5 power of membership interests entitled to vote at an election of directors, except that
6 a director who was elected solely by the patron members or the holders of a class or
7 series of membership interests, as provided in the articles or bylaws, may be removed
8 only by the affirmative vote of the holders of a majority of the voting power of the
9 patron members or of all membership interests of the class or series entitled to vote
10 at an election of that director, respectively.

11 (4) ELECTION OF REPLACEMENT DIRECTORS. Notwithstanding s. 193.421, a
12 replacement director may be elected to serve out the remaining term of the removed
13 director at a meeting at which the director was removed.

14 **193.417 Resignation of directors.** A director may resign by giving notice to
15 the board or the chairperson of the board. The resignation is effective without
16 acceptance upon receipt by the board or the chairperson of the board, unless the
17 notice specifies a later effective date.

18 **193.421 Filling vacancies. (1) PATRON DIRECTORS.** If a vacancy occurs in the
19 office of a director who was elected solely by the patron members, as provided in the
20 articles or bylaws, or a new office of director is created for such a director, the board,
21 in consultation with the other directors elected solely by the patron members, as
22 provided in the articles or bylaws, shall appoint a patron member of the cooperative
23 to temporarily fill the vacancy until a successor is elected at the next regular or
24 special members' meeting. An appointment under this subsection shall be by
25 majority vote of the remaining directors, regardless of whether there is a quorum

ASSEMBLY BILL 327**SECTION 89**

1 present. If there are no other directors elected solely by the patron members, as
2 provided in the articles or bylaws, at the time of the vacancy, the office shall remain
3 vacant and a special patron members' meeting shall be called to elect a successor.

4 (2) NONPATRON DIRECTORS. Unless otherwise provided in the articles or bylaws,
5 if a vacancy occurs in the office of any director other than a director described in sub.
6 (1) or if a new office of director is created other than a new office described in sub. (1),
7 the board shall appoint a director to temporarily fill the vacancy by majority vote of
8 the remaining directors, regardless of whether there is a quorum present. A
9 successor shall be elected at the next regular or special members' meeting.

10 (3) TERM OF SUCCESSOR. Any successor elected under this section is elected for
11 the remainder of the unexpired term of the director whose vacancy the successor was
12 elected to fill.

13 **193.423 Allocation of voting authority among directors.** (1) The voting
14 authority of the directors may be allocated according to allocation units or equity
15 classifications of the cooperative if any of the following conditions is satisfied:

16 (a) The directors elected by patron members have collectively at least 51
17 percent of the voting authority of the board on general matters of the cooperative.

18 (b) The directors elected by patron members do not have, collectively, minority
19 voting authority on the board on general matters of the cooperative.

20 (2) The patron board directors' vote shall be voted collectively as determined
21 by a majority vote of the patron directors. A tie in the number of patron board director
22 votes shall be construed as a vote against the matter.

23 **193.425 Board meetings.** (1) TIME AND PLACE. Meetings of the board may be
24 held from time to time as provided in the articles or bylaws at any location that the
25 board selects or by any means described in sub. (2).

ASSEMBLY BILL 327

1 **(2) VIRTUAL MEETINGS AND ATTENDANCE.** Meetings of the board may be held by
2 any means of communication through which the directors may simultaneously hear
3 each other during the meeting. A director may participate in a meeting of the board
4 at which other directors are physically present by any means of communication
5 through which the director, all other directors so participating, and all directors
6 physically present may simultaneously hear each other during the meeting. The
7 number of directors physically present at a meeting, if any, shall be added to the
8 number of directors otherwise participating in the meeting under this subsection to
9 determine whether a quorum is present under s. 193.431, except that any director
10 who objects at the beginning of the meeting to the transaction of business because
11 the meeting is not lawfully called or convened and who fails to participate in the
12 meeting after the objection may not be considered as present at the meeting for
13 purposes of determining whether a quorum is present.

14 **(3) CALLING MEETINGS AND NOTICE.** Unless the articles or bylaws provide for a
15 different time period and except as provided in s. 193.205 (3) and subs. (4) and (5),
16 a director may call a board meeting by giving at least 10 days' notice. The notice shall
17 state the date, time, and place of the meeting, except that, if the meeting is held under
18 sub. (2) and if no physical presence of directors at the meeting is intended, the notice
19 shall so state. If required under this chapter, the articles, or the bylaws, the notice
20 shall state the purpose of the meeting.

21 **(4) PREVIOUSLY SCHEDULED OR ADJOURNED MEETINGS.** If the day, time, and place
22 of a board meeting are provided in the articles or bylaws, or announced at a previous
23 board meeting, no notice of the meeting is required. Notice that an adjourned
24 meeting will be reconvened need not be given other than by announcement at the
25 meeting at which adjournment is taken.

ASSEMBLY BILL 327**SECTION 89**

1 (5) **WAIVER OF NOTICE AND OBJECTION.** A director may waive notice of a board
2 meeting. A waiver is effective whether given before, at, or after the meeting, and
3 whether given in writing, orally, or by attendance. Attendance by a director at a
4 board meeting is a waiver of notice of that meeting, unless the director objects at the
5 beginning of the meeting to the transaction of business because the meeting is not
6 lawfully called or convened and does not participate in the meeting after the
7 objection.

8 (6) **VOTING BY ABSENT DIRECTORS.** If the articles or bylaws so provide, a director
9 may give advance written consent or opposition to a proposal to be acted on at a board
10 meeting. If the director is not present at the meeting, consent or opposition to a
11 proposal does not constitute presence for purposes of determining the existence of a
12 quorum. If the proposal to be acted on at the meeting is substantially the same or
13 has substantially the same effect as the proposal to which the director has consented
14 or opposed, the consent or opposition shall be counted as the vote of a director present
15 at the meeting in favor of or against the proposal and shall be entered in the minutes
16 or other record of action at the meeting.

17 **193.431 Quorum; presence of objecting director.** Unless otherwise
18 provided in the articles or bylaws, a majority of the directors currently holding office
19 is a quorum for the transaction of business. Any director who objects at the beginning
20 of a board meeting to the transaction of business because the meeting is not lawfully
21 called or convened and who fails to participate in the meeting after the objection may
22 not be considered as present at the meeting for purposes of determining whether a
23 quorum is present. In the absence of a quorum, a majority of the directors present
24 may adjourn a meeting from time to time until a quorum is present. If a quorum is
25 present when a meeting is properly convened, the directors present may continue to

ASSEMBLY BILL 327

1 transact business until adjournment, even though the withdrawal of a number of
2 directors originally present leaves less than a quorum.

3 **193.435 Actions of the board. (1) GENERALLY.** Unless this chapter or the
4 articles or bylaws provide otherwise and except as provided in sub. (2), the board
5 shall take action by the affirmative vote of the greater of the following:

6 (a) A majority of directors present at a meeting at the time the action is taken.

7 (b) A majority of the minimum number of directors that would constitute a
8 quorum for the transaction of business at the meeting.

9 **(2) EXCEPTION FOR OBJECTING DIRECTOR.** Any director who objects at the
10 beginning of a board meeting to the transaction of business because the meeting is
11 not lawfully called or convened and who fails to participate in the meeting after the
12 objection may not be considered as present at the meeting for purposes of sub. (1).

13 **193.441 Actions without a meeting. (1) GENERALLY.** (a) Unless the articles
14 or bylaws provide otherwise, any action required or permitted by this chapter to be
15 authorized at a board meeting may be authorized without a meeting if that action
16 is authorized by all directors and is evidenced by one or more written statements,
17 signed by each director, describing and consenting to the action. Such an action has
18 the same effect as an action authorized by unanimous vote at a meeting at which all
19 directors are present and may be described as such in any document.

20 (b) The articles or bylaws may allow the board to take any other action on behalf
21 of the cooperative, other than an action requiring member approval, without a board
22 meeting, if the action is authorized by the number of directors that would be required
23 to approve the action at a board meeting at which all directors were present and if
24 the action is evidenced by one or more written statements, signed by each
25 authorizing director, describing and consenting to the action. Such an action has the

ASSEMBLY BILL 327**SECTION 89**

1 same effect as an action authorized by vote of the number of authorizing directors
2 at a meeting at which all directors are present and may be described as such in any
3 document.

4 (2) EFFECTIVE DATE. Any action authorized under sub. (1) is effective when the
5 last director necessary for authorization signs the statement evidencing his or her
6 consent, unless the statement specifies a different effective date.

7 (3) NOTICE AND LIABILITY. When an action is taken under sub. (1) (b) with the
8 authorization of less than all directors, the authorizing directors shall ensure that
9 all other directors are notified immediately of the action and its effective date.
10 Failure to provide the notice does not invalidate the action. A director who does not
11 authorize an action taken under sub. (1) (b) may not be held liable as a result of the
12 action.

13 (4) RECORDS. A cooperative shall retain all statements signed by its directors
14 under sub. (1).

15 **193.443 Board authority concerning certain cooperative property. (1)**

16 SALE IN USUAL AND REGULAR COURSE OF BUSINESS. The board may sell, lease, transfer,
17 or otherwise dispose of all or substantially all of the cooperative's property in the
18 usual and regular course of the cooperative's business.

19 (2) OTHER SALES. The board may sell, lease, transfer, or otherwise dispose of
20 all or substantially all of the cooperative's property not in the usual and regular
21 course of the cooperative's business if all of the following apply:

22 (a) The cooperative's accountant has given the board an opinion that the
23 cooperative cannot continue as an ongoing business and is under financial duress.

24 (b) The board has given notice to the members of the impending or potential
25 disposition prior to the disposition.

ASSEMBLY BILL 327

1 (c) The board has determined that failure to proceed with the disposition would
2 be adverse to the interests of the members and the cooperative.

3 (3) SECURITY INTERESTS. The board may grant a security interest in all or
4 substantially all of the cooperative's property whether or not in the usual and regular
5 course of the cooperative's business.

6 (4) TRANSFER TO CERTAIN AFFILIATES. The board may transfer any or all of the
7 cooperative's property to a business entity all the ownership interests of which are
8 owned by the cooperative.

9 (5) ASSET SECURITIZATION. For purposes of debt financing, the board may
10 transfer any or all of the cooperative's property to a special purpose entity owned or
11 controlled by the cooperative for an asset securitization.

12 **193.445 Audit committee.** The board shall establish an audit committee,
13 consisting of members who will ensure an independent review of the cooperative's
14 finances, to review the financial information and accounting reports of the
15 cooperative. The board shall present audited financial statements to the members
16 unless all of the following apply:

17 (1) The articles or bylaws permit financial statements that are not audited.

18 (2) The financial statements clearly state that they are not audited and a
19 statement is included in the financial statement describing the difference between
20 the financial statements and audited financial statements that are prepared
21 according to generally accepted accounting processes.

22 **193.451 Committees. (1) GENERALLY; SPECIAL LITIGATION COMMITTEE.** The
23 board, by resolution, may establish committees having the authority of the board in
24 the management of the business of the cooperative to the extent described in the
25 resolution. The board, by resolution, may establish a special litigation committee of

ASSEMBLY BILL 327**SECTION 89**

1 specified duration under this subsection, consisting of one or more independent
2 directors or other independent persons, to consider the legal rights of and remedies
3 available to the cooperative and whether those rights should be enforced and those
4 remedies should be pursued. Any committee established under this subsection,
5 other than a special litigation committee, is subject at all times to the direction and
6 control of the board. The board may amend a resolution establishing a special
7 litigation committee.

8 (2) **MEMBERSHIP.** A committee established under sub. (1) shall consist of one or
9 more individuals. Unless the articles or bylaws provide otherwise, committee
10 members need not be directors.

11 (3) **COMMITTEE PROCEDURE.** The procedures for a board meeting apply to a
12 meeting of a committee established under sub. (1) and to committee members to the
13 same extent as those procedures apply to a board meeting and directors.

14 (4) **MINUTES.** The chairperson of a committee established under sub. (1) shall
15 ensure that minutes, if any, of committee meetings are provided, upon request, to
16 members of the committee and to any director.

17 (5) **STANDARD OF CONDUCT FOR DIRECTORS.** Establishment of, delegation of
18 authority to, and action by a committee under sub. (1) does not alone constitute
19 compliance by a director with s. 193.455 (1).

20 (6) **DUTIES OF COMMITTEE MEMBERS; LIMITATION OF LIABILITY.** Sections 193.455,
21 193.461, and 193.465 apply to members of committees established under sub. (1) to
22 the same extent as those sections apply to directors.

23 **193.455 Conduct and liability of directors. (1) STANDARD AND LIABILITY.**

24 (a) A director shall discharge the duties of the office of director in good faith, in a
25 manner the director reasonably believes to be in the best interests of the cooperative,

ASSEMBLY BILL 327

1 and with the care an ordinarily prudent person in a like position would exercise
2 under similar circumstances. A director who so performs his or her duties may not
3 be held liable by reason of being or having been a director.

4 (b) In discharging his or her duties to the cooperative and in determining what
5 he or she believes to be in the best interests of the cooperative, a director may
6 consider any of the following:

7 1. The effects of the action on employees, suppliers, creditors, and customers
8 of the cooperative.

9 2. The effects of the action on communities in which the cooperative operates.

10 3. The effects of the action on members and stockholders.

11 4. The economy of this state.

12 5. The long-term and short-term interests of the cooperative and its patron
13 members, including the possibility that these interests may be best served by the
14 continued independence of the cooperative.

15 6. Any other factors the director considers pertinent.

16 (2) RELIANCE. (a) A director may rely on information, opinions, reports, or
17 statements, including financial statements and other financial data, if prepared or
18 presented by any of the following:

19 1. One or more officers or employees of the cooperative whom the director
20 reasonably believes to be reliable and competent in the matters presented.

21 2. Counsel, public accountants, or other persons as to matters that the director
22 reasonably believes are within the person's professional or expert competence.

23 3. A committee established under s. 193.445 or 193.451 (1) on which the
24 director does not serve, as to matters within its designated authority, if the director
25 reasonably believes the committee to merit confidence.

ASSEMBLY BILL 327**SECTION 89**

1 (b) Paragraph (a) does not apply to a director who has knowledge concerning
2 the matter in question that makes the director's reliance under par. (a) unwarranted.

3 (3) PRESUMPTION OF ASSENT. A director who is present at a meeting of the board
4 when an action is approved by the board is presumed to have assented to the action
5 approved, unless the director is prohibited by a conflict of interest from voting on the
6 action or does any of the following:

7 (a) Objects at the beginning of the meeting to the transaction of business
8 because the meeting is not lawfully called or convened and fails to participate in the
9 meeting after the objection.

10 (b) Votes against the action at the meeting.

11 **193.461 Director conflicts of interest.** (1) CONFLICT VOIDING CERTAIN
12 CONTRACTS AND TRANSACTIONS. A contract or transaction between a cooperative and
13 a director, as determined under sub. (2) (b) 1., or between a cooperative and a
14 business entity of which at least one of the cooperative's directors is a governor,
15 director, manager, officer, or legal representative, as determined under sub. (2) (b)
16 2., or in which at least one of the cooperative's directors has a material financial
17 interest, as determined under sub. (2) (a), is void unless any of the following apply:

18 (a) The contract or transaction was fair and reasonable as to the cooperative
19 at the time it was authorized or ratified by the cooperative; the material facts as to
20 the contract or transaction and as to the director's interest are disclosed or known
21 to the members before the contract or transaction is authorized or ratified by the
22 cooperative; and the material facts as to the contract or transaction and as to the
23 director's interest are fully disclosed or known to the board or a committee
24 established under s. 193.445 or 193.451 (1), and the board or committee in good faith
25 authorizes or ratifies the contract or transaction. The interested director may not

ASSEMBLY BILL 327

1 be counted in determining the presence of a quorum at a meeting where the contract
2 or transaction may be authorized or ratified and may not vote on the authorization
3 or ratification. The person asserting the validity of the contract or transaction has
4 the burden of establishing that the contract or transaction was fair and reasonable
5 as to the cooperative at the time it was authorized or ratified by the cooperative.

6 (b) The contract or transaction is a distribution, or is a contract or transaction
7 that is made available to all members or patron members as part of the cooperative's
8 business.

9 (c) The contract or transaction results from a resolution fixing the
10 compensation of a director or of another officer, employee, or agent of the cooperative.

11 **(2) MATERIAL FINANCIAL INTEREST; TRANSACTIONS INVOLVING THIRD PARTIES.** (a) For
12 purposes of sub. (1), a director has a material financial interest in each organization
13 in which that director, that director's spouse, parent, child, or sibling, the spouse of
14 that director's child or sibling, or the sibling of that director's spouse has a material
15 financial interest.

16 (b) 1. For purposes of sub. (1), a contract or transaction between a cooperative
17 and a director or that director's spouse, parent, child, or sibling, the spouse of that
18 director's child or sibling, or the sibling of that director's spouse, is considered to be
19 a transaction between the cooperative and the director.

20 2. For purposes of sub. (1), a contract or transaction between a cooperative and
21 a business entity of which a director or that director's spouse, parent, child, or
22 sibling, the spouse of that director's child or sibling, or the sibling of that director's
23 spouse, is a governor, director, manager, officer, or legal representative is considered
24 to be a transaction between the cooperative and a business entity of which the
25 director is a governor, director, manager, officer, or legal representative.