



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, HARS DORF 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.~~ 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.

ASSEMBLY BILL 1186**SECTION 59**

1 **SECTION 59.** 180.0103 (8) of the statutes is amended to read:

2 180.0103 (8) "Entity" includes a domestic corporation; a foreign corporation;
3 a limited liability company; a nonstock corporation; a stock or nonstock cooperative
4 association; an unincorporated cooperative association; a profit or nonprofit
5 unincorporated association; a business trust; an estate; a partnership; a trust; 2 or
6 more persons having a joint or common economic interest; a state or an agency,
7 commission, department, authority, bureau or other instrumentality of a state; a
8 governmental subdivision; the United States; and a foreign government.

9 **SECTION 60.** 180.0401 (2) (a) 7. of the statutes is amended to read:

10 180.0401 (2) (a) 7. The name of a cooperative association or an unincorporated
11 cooperative association incorporated or authorized to transact business in this state.

12 **SECTION 61.** 180.0401 (3) (a) of the statutes is amended to read:

13 180.0401 (3) (a) The other corporation or the foreign corporation, limited
14 liability company, nonstock corporation, limited partnership, limited liability
15 partnership ~~or~~, cooperative association, or unincorporated cooperative association
16 consents to the use in writing and submits an undertaking in a form satisfactory to
17 the department to change its name to a name that is distinguishable upon the records
18 of the department from the name of the applicant.

19 **SECTION 62.** 180.1506 (2) (a) 7. of the statutes is amended to read:

20 180.1506 (2) (a) 7. The name of a cooperative association or an unincorporated
21 cooperative association incorporated or authorized to transact business in this state.

22 **SECTION 63.** 180.1506 (3) (a) of the statutes is amended to read:

23 180.1506 (3) (a) The other foreign corporation or the domestic corporation,
24 limited liability company, nonstock corporation, limited partnership, limited
25 liability partnership ~~or~~, cooperative association, or unincorporated cooperative

ASSEMBLY BILL 1186

1 association consents to the use in writing and submits an undertaking in a form
2 satisfactory to the department to change its name to a name that is distinguishable
3 upon the records of the department from the name of the applicant.

4 **SECTION 64.** 181.0401 (2) (a) 3. of the statutes is amended to read:

5 181.0401 (2) (a) 3. A name reserved or registered under this chapter or ch. 178,
6 179, 180, 183 ~~or~~, 185, or 193.

7 **SECTION 65.** 181.0401 (2) (a) 7. of the statutes is amended to read:

8 181.0401 (2) (a) 7. The name of a cooperative association or an unincorporated
9 cooperative association incorporated or authorized to transact business in this state.

10 **SECTION 66.** 181.0401 (3) (a) of the statutes is amended to read:

11 181.0401 (3) (a) The other corporation or the foreign corporation, limited
12 liability company, stock corporation, limited partnership, limited liability
13 partnership ~~or~~, cooperative association, or unincorporated cooperative association
14 consents to the use in writing and submits an undertaking in a form satisfactory to
15 the department to change its name to a name that is distinguishable upon the records
16 of the department from the name of the applicant.

17 **SECTION 67.** 181.1150 of the statutes is amended to read:

18 **181.1150 Conversion of cooperative.** A cooperative or an unincorporated
19 cooperative association organized without capital stock may elect to convert itself to
20 a corporation by adopting and filing restated articles of incorporation or organization
21 in the manner required under ch. 185 or 193. The restated articles of incorporation
22 or organization shall conform to the requirements of s. 181.0202 and shall contain
23 a statement that the cooperative or unincorporated cooperative association elects to
24 convert itself to a corporation subject to this chapter. The election to become a

ASSEMBLY BILL 1186**SECTION 67**

1 corporation subject to this chapter is effective upon the filing of the restated articles
2 of incorporation or organization.

3 **SECTION 68.** 181.1506 (2) (a) 3. of the statutes is amended to read:

4 181.1506 (2) (a) 3. A name reserved or registered under this chapter or ch. 178,
5 179, 180, 183 ~~or~~, 185, or 193.

6 **SECTION 69.** 181.1506 (2) (a) 7. of the statutes is amended to read:

7 181.1506 (2) (a) 7. The name of a cooperative association or an unincorporated
8 cooperative association incorporated or authorized to transact business in this state.

9 **SECTION 70.** 181.1506 (3) (a) of the statutes is amended to read:

10 181.1506 (3) (a) The other foreign corporation or the domestic corporation,
11 limited liability company, nonstock corporation, limited partnership, limited
12 liability partnership ~~or~~, cooperative association, or unincorporated cooperative
13 association consents to the use in writing and submits an undertaking in a form
14 satisfactory to the department to change its name to a name that is distinguishable
15 upon the records of the department from the name of the applicant.

16 **SECTION 71.** 182.01 (3) (intro.) of the statutes is amended to read:

17 182.01 (3) NAME OF DRAFTER ON DOCUMENTS. (intro.) No articles of
18 incorporation, articles of organization, articles of amendment, articles of merger,
19 consolidation or share exchange, articles of dissolution, restated articles of
20 incorporation, certificate of abandonment, or statement or articles of revocation of
21 voluntary dissolution, provided for pursuant to ch. 180, 181, 183, 185 ~~or~~, 187, or 193;
22 no registration statement, amendment of a registration statement, or written notice
23 of withdrawal under s. 178.40; and no certificate of limited partnership, certificate
24 of amendment, restated certificate of limited partnership or certificate of
25 cancellation, provided for pursuant to ch. 179, shall be filed by the department unless

ASSEMBLY BILL 1186

1 the name of the individual who, or the governmental agency which, drafted such
2 document is printed, typewritten, stamped or written thereon in a legible manner.
3 A document complies with this subsection if it contains a statement in the following
4 form: "This document was drafted by... (Name)". This subsection shall not apply to
5 a document executed prior to December 1, 1967, or to:

6 **SECTION 72.** 182.017 (1) of the statutes is amended to read:

7 182.017 (1) RIGHT-OF-WAY FOR. Any domestic corporation organized to furnish
8 telegraph or telecommunications service or transmit heat, power or electric current
9 to the public or for public purposes, an independent system operator, as defined in
10 s. 196.485 (1) (d), an independent transmission owner, as defined in s. 196.485 (1)
11 (dm), or a cooperative association organized under ch. 185 or 193 to furnish telegraph
12 or telecommunications service or a cooperative organized under ch. 185 to transmit
13 heat, power or electric current to its members, may, subject to ss. 30.44 (3m), 30.45,
14 86.16 and 196.491 (3) (d) 3m. and to reasonable regulations made by any city, village
15 or town through which its transmission lines or systems may pass, construct and
16 maintain such lines or systems with all necessary appurtenances in, across or
17 beneath any public highway or bridge or any stream or body of water, or upon any
18 lands of any owner consenting thereto, and for such purpose may acquire lands or
19 the necessary easements; and may connect and operate its lines or system with other
20 lines or systems devoted to like business, within or without this state, and charge
21 reasonable rates for the transmission and delivery of messages or the furnishing of
22 heat, power or electric light.

23 **SECTION 73.** 182.025 (1) of the statutes is amended to read:

24 182.025 (1) Any domestic corporation formed to furnish water, heat, light,
25 power, telegraph or telecommunications service or signals by electricity may, subject

ASSEMBLY BILL 1186**SECTION 73**

1 to the provisions of ch. 201 and by an affirmative vote of at least two-thirds of its
2 outstanding shares entitled to vote thereon, or any cooperative association organized
3 under ch. 185 to furnish water, heat, light, or power, telegraph—~~or~~
4 ~~telecommunications service~~ or any cooperative organized under ch. 185 or 193 to
5 furnish telegraph or telecommunication service to its stockholders or members only
6 may, by a vote of a majority of a quorum of its stockholders or members present at
7 any regular or special meeting held upon due notice as to the purpose of the meeting
8 or when authorized by the written consent of the holders of a majority of its capital
9 stock outstanding and entitled to vote or of a majority of its members, mortgage or
10 trust deed any or all of the property, rights and privileges and franchises that it may
11 then own or thereafter acquire, to secure the payment of its bonds or notes to a fixed
12 amount or in amounts to be from time to time determined by the board of directors,
13 and may, in and by such mortgage or deed of trust, provide for the disposal of any of
14 its property and the substitution of other property in its place. Every such mortgage
15 or deed of trust may be recorded in the office of the register of deeds of the county in
16 which such corporation is located at the time of such recording, and such record shall
17 have the same effect as if the instrument were filed in the proper office as a chattel
18 mortgage or financing statement, and so remain until satisfied or discharged
19 without any further affidavit, continuation statement or proceeding whatever. For
20 this purpose the location of such corporation shall be deemed to be: as to a
21 corporation or a cooperative association not at the time subject to either s. 180.0501
22 ~~or~~, 185.08, or 193.115 (1), the location designated in its articles as then in effect; as
23 to a corporation subject to s. 180.0501, the location of its registered office; and as to
24 a cooperative association subject to s. 185.08 or 193.115 (1), the location of its
25 principal office or registered agent as designated thereunder.

SUBCHAPTER I

GENERAL PROVISIONS

1
2
3 **193.001 Citation.** This chapter may be cited as the “Wisconsin Cooperative
4 Associations Act.”

5 **193.005 Definitions.** Unless the context requires otherwise, in this chapter:

6 **(2)** “Address” means mailing address and, in the case of a registered address,
7 means the mailing address and the actual office location, which may not be a post
8 office box.

9 **(2m)** “Affiliate,” when used in reference to any person, means another person
10 who controls, is controlled by, or is under common control with the person.

11 **(3)** “Alternative Ballot” means a method of voting, prescribed by the board in
12 advance of the vote, that permits a vote to be cast electronically, telephonically, via
13 the Internet, or by any similar means which reasonably allows members the
14 opportunity to vote.

15 **(3m)** “Allocation unit” means a separate business unit of a cooperative.

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

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

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

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

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

25 **(9m)** “Department” means the department of financial institutions.

ASSEMBLY BILL 1186

1 **(10)** “Domestic business entity” means a business entity organized under the
2 laws of this state.

3 **(11m)** “Electronic” means relating to technology having electrical, digital,
4 magnetic, wireless, optical, electromagnetic, or similar capabilities.

5 **(11p)** “Electronic signature” means an electronic sound, symbol, or process,
6 attached to or logically associated with a writing and executed or adopted by a person
7 with intent to authenticate the writing.

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

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

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

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

18 **(16)** “Membership interest” means a member’s interest in a cooperative,
19 consisting of a member’s financial rights, a member’s right to assign financial rights,
20 a member’s governance rights, and a member’s right to assign governance rights.
21 The term includes patron membership interests and nonpatron membership
22 interests.

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

24 **(18)** “Nonpatron member” means a member who holds a nonpatron
25 membership interest.

ASSEMBLY BILL 1186**SECTION 78**

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

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

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

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

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

12 (24) “Sign” means to execute or adopt a manual, facsimile, conformed, or
13 electronic signature or any symbol with intent to authenticate a writing and, with
14 respect to a document required under this chapter to be filed with the department,
15 with authority to do so under this chapter and under the articles, bylaws, or a
16 resolution approved by the directors or members.

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

20 **193.105 Use of term “cooperative” restricted.** (1) USE OF TERM
21 “COOPERATIVE” RESTRICTED. A business entity may not use the term “cooperative” as
22 part of its business name or title or represent itself as a cooperative, in this state,
23 unless the business entity is a cooperative or foreign cooperative or is organized
24 under ch. 185.

ASSEMBLY BILL 1186

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

4 **193.111 Filing fees and other requirements. (1)** Except as provided under
5 sub. (2), the department shall charge and collect for:

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

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

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

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

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

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

20 (e) Receiving service of any process, notice, or demand, authorized to be served
21 on the department by this chapter, an amount equal to the fee established under s.
22 182.01 (4) (c).

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

ASSEMBLY BILL 1186**SECTION 78**

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

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

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

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

12 **193.115 Registered office and agent.** (1) REGISTERED OFFICE AND AGENT
13 REQUIRED. A cooperative shall establish and continuously maintain in this state all
14 of the following:

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

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

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

25 (a) The name of the cooperative.

ASSEMBLY BILL 1186

1 (b) The address of its registered office.

2 (c) The name of its registered agent.

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

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

8 (a) The name of the cooperative.

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

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

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

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

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

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

19 **(3)** DUTIES OF DEPARTMENT; EFFECTIVE DATE OF CHANGE. Upon receipt of a
20 statement delivered under sub. (2) or (2m), the department shall examine the
21 statement to ensure that it conforms to the applicable requirements of this section.
22 If the department finds that the statement conforms to the applicable requirements
23 of this section, the department shall file the statement. Any change designated in
24 a statement delivered under sub. (2m) takes effect upon filing of the statement by the
25 department.

ASSEMBLY BILL 1186**SECTION 78**

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

7 **(5) CHANGE OF ADDRESS OR NAME OF AGENT.** If the address or name of a
8 registered agent changes, the agent shall change the address of the registered office
9 or the name of the registered agent, as applicable, of the cooperative that appointed
10 the agent by filing with the department the statement required under sub. (2m),
11 except that the statement need only be signed by the registered agent, need not
12 satisfy sub. (2m) (e) or (g), and shall state that a copy of the statement has been
13 mailed to the cooperative or to the legal representative of the cooperative.

14 **193.121 Legal recognition of electronic records and signatures.** For the
15 purpose of satisfying 15 USC 7002 (a) (2) (B) as that statute relates to this chapter,
16 this state acknowledges the existence of the Electronic Signatures in Global and
17 National Commerce Act, 15 USC 7001 to 7031.

SUBCHAPTER II**ORGANIZATION**

20 **193.201 Organizational purpose.** Except as provided in s. 193.203, a
21 cooperative may be formed and organized on a cooperative plan for patrons as
22 provided under this chapter for any of the following purposes:

23 **(1)** To market, process, or otherwise change the form or marketability of
24 products, including crops, livestock, and other agricultural products; to manufacture
25 products; to accomplish other purposes that are necessary or convenient to facilitate

ASSEMBLY BILL 1186

1 the production or marketing of products by patron members and others; and to
2 accomplish other purposes that are related to the business of the cooperative.

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

4 (3) To accomplish any other lawful purpose.

5 **193.203 Exceptions.** No cooperative may be organized under this chapter for
6 the purpose of furnishing natural gas, heat, light, power, or water to its members.

7 **193.205 Organizers. (1) QUALIFICATION.** A cooperative may be organized by
8 one or more organizers who shall be individuals over the age of 18, who may act for
9 themselves as individuals or as the agents of other entities. The organizers forming
10 the cooperative need not be members of the cooperative.

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

15 (3) **MEETING OR WRITTEN ACTION.** After the articles are filed, the organizers or
16 the board named in the articles, as applicable, shall hold an organizational meeting
17 at the call of a majority of the organizers or of the board, as applicable, or take written
18 action for the purposes of transacting business and taking actions appropriate to
19 complete the organization of the cooperative. If a meeting is held under this
20 subsection, the person or persons calling the meeting shall give at least 3 days prior
21 notice of the meeting to each organizer or director, as applicable, stating the date,
22 time, and place of the meeting. An organizer or director may waive notice of an
23 organizational meeting in the same manner that a director may waive notice of
24 meetings of the board.

ASSEMBLY BILL 1186**SECTION 78**

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

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

10 **193.215 Articles of organization and notice of mailing address. (1)**
11 **FILING REQUIRED.** The organizers of a cooperative shall file with the department the
12 cooperative's original articles as specified under sub. (2), together with the statement
13 required under s. 193.115 (2) and a statement listing the current mailing address of
14 the cooperative.

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

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

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

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

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

ASSEMBLY BILL 1186

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

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

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

7 **193.221 Amendment of articles. (1) PROCEDURE.** (a) Except as provided
8 under sub. (3), the articles of a cooperative may be amended as follows:

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

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

18 a. By a majority of the votes cast.

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

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

ASSEMBLY BILL 1186**SECTION 78**

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

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

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

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

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

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

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

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

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

24 **193.225 Conversion to cooperative. (1) AUTHORITY AND NOTICE.** A business
25 entity other than an cooperative may become a cooperative by following the

ASSEMBLY BILL 1186

1 applicable procedure under sub. (2) or (3). A business entity shall provide its
2 members with a disclosure statement listing the rights and obligations of the
3 members and the capital structure of the proposed cooperative before making a
4 conversion under this section.

5 (2) PROCEDURE FOR ENTITIES ORGANIZED IN THIS STATE. A business entity
6 organized under the laws of this state, other than a cooperative, that elects to make
7 a conversion as provided under sub. (1) shall amend its organizational documents in
8 the manner provided under the laws that govern the business entity. The business
9 entity shall file with the department amended articles of organization that comply
10 with s. 193.215. Upon the filing of the amended articles of organization, the business
11 entity is converted to a cooperative and is governed by the applicable provisions of
12 this chapter.

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

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

ASSEMBLY BILL 1186**SECTION 78**

1 **193.231 Curative filing.** If the department determines that a cooperative has
2 made an erroneous filing under this chapter, the department may revoke and
3 expunge the erroneous filing and authorize a curative document to be filed. The
4 department shall charge the cooperative a filing fee of \$500 for any such revocation,
5 expungement, and subsequent curative filing.

6 **193.241 Bylaws. (1) REQUIRED.** A cooperative shall have bylaws governing
7 the cooperative's business affairs and structure, the qualifications, classification,
8 rights, and obligations of members, and the classifications, allocations, and
9 distributions of membership interests which are not otherwise provided in the
10 articles or by this chapter.

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

15 (a) A description of the capital structure of the cooperative, including a
16 statement of the classes and relative rights, preferences, and restrictions granted to
17 or imposed upon each class of member interests, the rights to share in profits or
18 distributions of the cooperative, and the authority to issue member interests and, if
19 applicable, a statement that the board may establish a class or series of member
20 interests, set forth the designation of the class or series, and fix the relative rights
21 and preferences of the class or series.

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

ASSEMBLY BILL 1186

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

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

8 (e) If nonpatron membership interests are authorized, a statement as to how
9 profits and losses will be allocated and cash will be distributed between patron
10 membership interests collectively and nonpatron membership interests collectively,
11 a statement that net income allocated to patron membership interests as determined
12 by the board in excess of dividends and additions to reserves shall be distributed on
13 the basis of patronage, and a statement that the records of the cooperative shall
14 include the interests of patron membership interests and, if authorized, nonpatron
15 membership interests in any classes of interests and in the reserves.

16 (f) A statement of the number of directors; the qualifications, manner of
17 election, powers, and duties of directors; and the manner in which any compensation
18 of directors is determined. Provisions included in the bylaws under this paragraph
19 shall be consistent with subch. IV.

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

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

24 (i) A general description of members' governance rights and financial rights,
25 assignability of governance and financial rights, and other rights, privileges, and

ASSEMBLY BILL 1186**SECTION 78**

1 obligations of members and their membership interests, which may be further
2 described in member control agreements.

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

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

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

11 1. The notice of the meeting contains a statement that the bylaws or
12 amendments will be voted upon, a statement summarizing the proposed bylaws or
13 amendments, and either copies of the bylaws or amendments or a statement that
14 copies of the bylaws or amendments are available from the cooperative upon request.

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

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

19 a. By a majority of the votes cast.

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

23 (c) The members may amend the bylaws even though the bylaws may also be
24 amended by the board. The board may amend the bylaws even though the bylaws
25 may also be amended by the members.

ASSEMBLY BILL 1186

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

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

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

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

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

13 (5) AMENDMENT TO CHANGE QUORUM OR VOTING REQUIREMENTS FOR MEMBERS. The
14 members may amend the bylaws to specify a greater quorum requirement for
15 members, or voting groups of members, or a greater number of votes or members
16 participating required for approval than is otherwise required by this chapter. An
17 amendment to the bylaws to add, change, or delete such a quorum or voting
18 requirement shall meet the same quorum requirement and be adopted by the same
19 vote and voting groups required to take action under the quorum and voting
20 requirements then in effect or proposed to be adopted, whichever are more stringent.

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

25 1. If the bylaw was originally adopted by the members, only by the members.

ASSEMBLY BILL 1186**SECTION 78**

1 2. If the bylaw was originally adopted by the board, by the members or by the
2 board.

3 (b) A bylaw, or amendment to the bylaws, adopted by the members that
4 specifies a greater quorum or voting requirement for the board as described in par.

5 (a) may provide that it may be subsequently amended only by a specified vote of
6 either the members or the board, but if the bylaw or amendment so provides, the
7 bylaw or amendment shall be originally adopted by the specified vote of the members
8 proposed in the bylaw or amendment.

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

13 **(7) EMERGENCY BYLAWS.** (a) Unless otherwise provided in the articles or bylaws,
14 the board may adopt emergency bylaws which take effect only during an emergency
15 as defined in par. (d). The emergency bylaws, which are subject to amendment or
16 repeal by the members, may include all provisions necessary for managing the
17 cooperative during an emergency, including any of the following:

18 1. Procedures for calling a meeting of the board.

19 2. Quorum requirements for the meeting.

20 3. Designation of additional or substitute directors.

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

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

24 1. Binds the cooperative.

ASSEMBLY BILL 1186

1 2. May not be the basis for imposition of liability on any director, officer,
2 employee, or agent of the cooperative on the ground that the action was not
3 authorized cooperative action.

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

6 **193.245 Cooperative records.** (1) A cooperative shall keep as permanent
7 records minutes of all meetings of its members and of the board, a record of all actions
8 taken by the members or the board without a meeting by a written unanimous
9 consent in lieu of a meeting, and a record of all waivers of notices of meetings of the
10 members and of the board.

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

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

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

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

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

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

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

ASSEMBLY BILL 1186**SECTION 78**

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

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

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

SUBCHAPTER III

COOPERATIVE POWERS

13 **193.301 Cooperative powers. (1) GENERALLY.** In addition to other powers,
14 a cooperative may perform every act necessary or proper to the conduct of the
15 cooperative's business or the accomplishment of the purposes of the cooperative. A
16 cooperative has all rights, powers, and privileges granted to entities organized under
17 ch. 185, except those that are inconsistent with an express provision of this chapter.

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

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

ASSEMBLY BILL 1186

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

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

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

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

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

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

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

15 (e) Invest its funds.

16 (f) Acquire, hold, and dispose of evidences of indebtedness of any business
17 entity.

18 **(7) ADVANCES TO PATRONS.** A cooperative may make advances to the
19 cooperative's members or patrons on products delivered by the members or patrons
20 to the cooperative.

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

23 **(9) LENDING TO AND BORROWING FROM MEMBERS.** A cooperative may loan money
24 to its members with security that it considers sufficient, whether or not any property

ASSEMBLY BILL 1186**SECTION 78**

1 taken as security is of the kind dealt in by the cooperative, and may borrow money
2 from its members.

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

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

13 **(11) INSURANCE.** A cooperative may purchase for its benefit life insurance and
14 other insurance with respect to the services of any of its members, managers,
15 directors, employees, and agents, and may purchase insurance on the life of a
16 member for the purpose of facilitating the cooperative's acquisition of any of the
17 member's membership interests in the cooperative at the death of the member.

18 **(12) OWNERSHIP INTERESTS IN OTHER ENTITIES.** (a) A cooperative may acquire,
19 hold, or dispose of ownership interests in another business entity and, if a
20 cooperative acquires ownership interests under this paragraph, assume all rights,
21 interests, privileges, responsibilities, and obligations arising out of the ownership
22 interests. A cooperative that holds an ownership interest in another business entity
23 may, by direction of the board, elect or appoint an individual to represent the
24 cooperative at a meeting of the business entity. The representative may represent

ASSEMBLY BILL 1186

1 the cooperative at such a meeting and may cast any vote the cooperative is entitled
2 to cast at the meeting.

3 (b) A cooperative may organize business entities.

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

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

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

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

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

16 1. No earlier than 3 years and no later than 5 years after the allocation,
17 distribution, or credit is first made available to its owner, the board declares that the
18 allocation, distribution, or credit will be forfeited to the cooperative unless claimed
19 by a date determined by the board, which date shall be a business day at least 60 days
20 after the date of mailing under subd. 2.

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

ASSEMBLY BILL 1186**SECTION 78**

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

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

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

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

11 **193.305 Emergency powers. (1)** In anticipation of or during an emergency,
12 as defined in sub. (4), the board may do any of the following:

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

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

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

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

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

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

ASSEMBLY BILL 1186

1 (a) Binds the cooperative.

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

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

7 **193.311 Agricultural product and commodity marketing contracts. (1)**
8 **AUTHORITY.** A cooperative and its patron member or patron may enter into a
9 marketing contract, requiring the patron member or patron to sell a specified portion
10 of the patron member's or patron's agricultural product or specified commodity
11 produced from a specified area exclusively to or through the cooperative or a facility
12 established by the cooperative.

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

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

ASSEMBLY BILL 1186

1 **193.401 Board governs cooperative.** A cooperative shall be governed by its
2 board which shall take all action for and on behalf of the cooperative except those
3 actions reserved or granted to members. No director or group of directors may act
4 for or on behalf of the cooperative unless authorized by the board or this chapter. A
5 director may advocate interests of members or member groups to the board, but the
6 fiduciary duty of each director is to represent the best interests of the cooperative and
7 all members collectively.

8 **193.405 Number of directors.** The board shall have at least 5 directors,
9 except that the board of a cooperative with 50 or fewer members may have as few as
10 3 directors.

11 **193.411 Election of directors. (1) INITIAL BOARD.** The initial board shall be
12 established as provided under s. 193.205 (2) and, except as provided in s. 193.205 (2),
13 shall serve until directors are elected by members. The initial board shall appoint
14 directors to fill any vacancies on the initial board, until the directors are elected by
15 the members.

16 **(2) GENERALLY.** (a) Directors shall be elected or appointed for the term, at the
17 time, and in the manner provided in this section and the articles and bylaws.

18 (b) If nonpatron members or nonpatron membership interest are granted
19 voting rights, a majority of the directors shall be members and a majority of the
20 directors shall be elected exclusively by patron members, unless otherwise provided
21 in the articles or bylaws. The patron members may also elect an outside director who
22 is an expert in financial matters but who has no financial interest in the cooperative.
23 Unless the articles or bylaws provide otherwise, the outside director may not vote.

ASSEMBLY BILL 1186**SECTION 78**

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

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

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

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

17 **(4m) CUMULATIVE VOTING.** Unless the articles or bylaws so provide, directors
18 may not be elected through the use of any system of voting that permits a voter to
19 allocate multiple votes among eligible candidates.

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

21 (a) A member may vote only by casting a ballot as provided under s. 193.545
22 (3).

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

24 (c) To cast a ballot by mail, a member shall mark the ballot for the candidate
25 chosen, seal the ballot in a plain envelope bearing the member's name and the words

ASSEMBLY BILL 1186

1 "BALLOT ENCLOSED," or similar words, and enclose that envelope in another
2 envelope addressed to the cooperative. To cast an alternative ballot, a member shall
3 follow the procedure prescribed by the board.

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

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

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

16 **193.415 Removal of directors.** All of the following apply, unless the articles
17 or bylaws provide otherwise:

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

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

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

ASSEMBLY BILL 1186**SECTION 78**

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

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

12 **193.417 Resignation of directors.** A director may resign by giving notice to
13 the board or the chairperson of the board. The resignation is effective without
14 acceptance upon receipt by the board or the chairperson of the board, unless the
15 notice specifies a later effective date.

16 **193.421 Filling vacancies. (1) PATRON DIRECTORS.** If a vacancy occurs in the
17 office of a director who was elected solely by the patron members, as provided in the
18 articles or bylaws, or a new office of director is created for such a director, the board,
19 in consultation with the other directors elected solely by the patron members, as
20 provided in the articles or bylaws, shall appoint a patron member of the cooperative
21 to temporarily fill the vacancy until a successor is elected at the next regular or
22 special members' meeting. An appointment under this subsection shall be by
23 majority vote of the remaining directors, regardless of whether there is a quorum
24 present. If there are no other directors elected solely by the patron members, as

ASSEMBLY BILL 1186

1 provided in the articles or bylaws, at the time of the vacancy, the office shall remain
2 vacant and a special patron members' meeting shall be called to elect a successor.

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

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

12 **193.423 Allocation of voting authority among directors.** (1) The voting
13 authority of the directors may be allocated according to allocation units or equity
14 classifications of the cooperative if any of the following conditions is satisfied:

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

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

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

22 **193.425 Board meetings.** (1) TIME AND PLACE. Meetings of the board may be
23 held from time to time as provided in the articles or bylaws at any location that the
24 board selects or by any means described in sub. (2).

ASSEMBLY BILL 1186**SECTION 78**

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 1186

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 1186**SECTION 78**

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 1186

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 1186**SECTION 78**

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 1186

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 1186**SECTION 78**

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 1186

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 1186**SECTION 78**

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.

ASSEMBLY BILL 1186

1 **193.465 Limitation of director’s liability in articles or bylaws.** The
2 articles or bylaws may eliminate or limit a director’s personal liability to the
3 cooperative or its members for monetary damages for violating s. 193.455 (1) (a),
4 except that neither the articles nor the bylaws may eliminate or limit the liability of
5 a director for any of the following:

6 (1) A breach of the director’s duty of loyalty to the cooperative or its members.

7 (2) An act or omission not in good faith or that involves intentional misconduct
8 or a knowing violation of law.

9 (3) A transaction from which the director derived an improper personal benefit.

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

12 (5) A knowing violation of ch. 408, subject to s. 193.605, or illegal distributions
13 of cooperative assets.

14 **193.471 Indemnification. (1) DEFINITIONS.** In this section:

15 (a) “Official capacity” means any of the following:

16 1. A person’s capacity as an officer, employee, or agent of a cooperative or
17 predecessor cooperative.

18 2. A person’s capacity as a member of a committee of a cooperative under s.
19 193.445 or 193.451 (1) or of a committee of a predecessor cooperative.

20 3. With respect to a director, chief executive officer, member, or employee of a
21 cooperative who, at the request of the cooperative, serves as a governor, director,
22 manager, officer, member, partner, trustee, employee, or agent of another
23 organization or employee benefit plan, that person’s capacity as a governor, director,
24 manager, officer, member, partner, trustee, employee, or agent, as applicable, of the
25 other organization or employee benefit plan.

ASSEMBLY BILL 1186**SECTION 78**

1 4. With respect to a person who was a director, chief executive officer, member,
2 or employee of a predecessor cooperative and who, at the request of the predecessor
3 cooperative, served as a governor, director, manager, officer, member, partner,
4 trustee, employee, or agent of another organization or employee benefit plan, that
5 person's capacity as a governor, director, manager, officer, member, partner, trustee,
6 employee, or agent, as applicable, of the other organization or employee benefit plan.

7 (b) "Potential litigant" means a person made or threatened to be made a party
8 to a proceeding by reason of the person's former or present official capacity.

9 (c) "Predecessor cooperative" means a domestic or foreign cooperative that was
10 the predecessor of a cooperative in a merger or other transaction in which the
11 predecessor's existence ceased upon consummation of the transaction.

12 (d) "Proceeding" means a threatened, pending, or completed civil, criminal,
13 administrative, arbitration, or investigative proceeding, including a proceeding by
14 or in the right of the cooperative.

15 (e) "Special legal counsel" means counsel who has not represented any of the
16 following:

17 1. The cooperative or an affiliate.

18 2. The director, manager, member of a committee under s. 193.445 or 193.451
19 (1), or employee whose indemnification is in issue.

20 **(2) INDEMNIFICATION.** (a) Subject to sub. (4), a cooperative shall indemnify a
21 potential litigant against judgments, penalties, and fines applicable to a proceeding,
22 against excise taxes assessed against the person with respect to an employee benefit
23 plan, and against settlements and reasonable expenses, including attorney fees and
24 disbursements, incurred by the potential litigant in connection with the proceeding,

ASSEMBLY BILL 1186

1 if, with respect to the acts or omissions of the potential litigant complained of in the
2 proceeding, all of the following apply:

3 1. The potential litigant has not been indemnified against the same amounts
4 by another person.

5 2. The potential litigant acted in good faith.

6 3. The potential litigant did not receive an improper personal benefit or commit
7 an act for which liability cannot be eliminated or limited under s. 193.465 (2).

8 4. In the case of a criminal proceeding, the potential litigant had no reasonable
9 cause to believe the acts or omissions were unlawful.

10 5. In the case of acts or omissions committed in an official capacity, as defined
11 in sub. (1) (a) 1. or 2., the potential litigant reasonably believed that the acts or
12 omissions were in the best interests of the cooperative or predecessor cooperative, as
13 applicable, and, in the case of acts or omissions committed in an official capacity, as
14 defined in sub. (1) (c) 3. or 4., the potential litigant reasonably believed that the
15 conduct was not opposed to the best interests of the cooperative or predecessor
16 cooperative, as applicable. If the acts or omissions relate to conduct as a director,
17 officer, trustee, employee, or agent of an employee benefit plan, the conduct is not
18 considered to be opposed to the best interests of the cooperative or predecessor
19 cooperative if the potential litigant reasonably believed that the conduct was in the
20 best interests of the participants or beneficiaries of the employee benefit plan.

21 (b) The termination of a proceeding by judgment, order, settlement, or
22 conviction or upon a plea of no contest or its equivalent does not, of itself, establish
23 that the potential litigant did not meet the applicable criteria under par. (a).

24 **(3) ADVANCES.** Subject to sub. (4), a potential litigant is entitled, upon written
25 request to the cooperative, to payment or reimbursement by the cooperative of

ASSEMBLY BILL 1186**SECTION 78**

1 reasonable expenses, including attorney fees and disbursements, incurred by the
2 potential litigant in advance of the final disposition of the proceeding if the potential
3 litigant delivers to the cooperative a written statement that the potential litigant
4 believes in good faith that the applicable criteria for indemnification under sub. (2)
5 (a) have been satisfied and a written undertaking by the potential litigant to repay
6 all amounts so paid or reimbursed by the cooperative if a court determines under sub.
7 (6) (c) that the potential litigant is ineligible for indemnification. The written
8 undertaking is an unlimited general obligation of the potential litigant but need not
9 be secured, and the cooperative shall accept the written undertaking without
10 reference to the potential litigant's financial ability to make the repayment.

11 **(4) PROHIBITION, CONDITIONS, AND LIMITATIONS ON INDEMNIFICATION OR ADVANCES.**

12 The articles or bylaws may prohibit indemnification or advances of expenses
13 otherwise required by subs. (2) and (3). The articles or bylaws may impose
14 limitations on indemnification or advances of expenses or conditions on
15 indemnification or advances of expenses in addition to the conditions contained in
16 subs. (2) and (3), if the limitations or conditions apply equally to all persons or to all
17 persons within a given class. A prohibition, limitation, or condition contained in the
18 articles or bylaws under this subsection does not apply to any person seeking
19 indemnification or advancement of expenses under sub. (2) or (3) with respect to any
20 acts or omissions of the person committed before the effective date of the provision
21 in the articles or the date of adoption of the provision in the bylaws, as applicable,
22 establishing the prohibition, limitation, or condition.

23 **(5) REIMBURSEMENT TO WITNESSES.** This section does not require, or limit the

24 ability of, a cooperative to reimburse expenses, including attorney fees and

ASSEMBLY BILL 1186

1 disbursements, incurred by a person in connection with an appearance as a witness
2 in a proceeding at a time when the person is not a potential litigant.

3 **(6) DETERMINATION OF ELIGIBILITY.** (a) Except as otherwise provided in this
4 subsection, all determinations whether indemnification of a person is required under
5 sub. (2) and whether payment or reimbursement of expenses is required under sub.
6 (3) shall be made as follows:

7 1. By the board, except as otherwise provided in this paragraph. The directors
8 who are, at the time, parties to the proceeding may not vote on the question of a
9 determination under this subdivision and may not be counted in determining the
10 presence of a quorum at a meeting at which such a question is voted upon.

11 2. If a quorum under subd. 1. cannot be obtained because of the number of
12 directors that are parties to the proceeding and except as otherwise provided in this
13 paragraph, by a majority of a committee under s. 193.451 (1) that consists of 2 or more
14 directors not at the time parties to the proceeding and that is duly designated to act
15 in the matter by a majority of all directors, including those who are parties.

16 3. If a determination is not made under subd. 1. or 2. and except as otherwise
17 provided in this paragraph, by special legal counsel, selected either by the board or
18 a committee under s. 193.451 (1). If selected by the board, the vote and determination
19 of the presence of a quorum shall be made as described in subd. 1. If selected by a
20 committee, the committee shall be designated to act and shall vote in the manner
21 described in subd. 2.

22 4. Except as otherwise provided under this paragraph, if a determination is not
23 made under subd. 1. or 2. and if a quorum of the board cannot be obtained and a
24 committee cannot be established as required under subd. 3., by special legal counsel,

ASSEMBLY BILL 1186**SECTION 78**

1 selected by a majority of all directors, including directors who are parties to the
2 proceeding.

3 5. If a determination is not made under subds. 1. to 4., by the affirmative vote
4 of the members. The membership interests held by parties to the proceeding may
5 not be counted in determining the presence of a quorum at a meeting at which the
6 question of a determination under this subdivision is voted upon and parties holding
7 such membership interests may not vote on the determination.

8 (b) Except as provided in par. (c), with respect to a person who is not, and was
9 not at the time of the acts or omissions complained of in the proceedings, a director,
10 chief executive officer, or person possessing, directly or indirectly, the power to direct
11 or cause the direction of the management or policies of the cooperative, the
12 determination whether indemnification of the person is required under sub. (2) and
13 whether the payment or reimbursement of expenses is required under sub. (3) shall
14 be made by an annually appointed committee under s. 193.451 (1), having at least
15 one member who is a director. Any such committee shall report at least annually to
16 the board concerning its actions.

17 (c) Within 60 days after the termination of the applicable proceeding or the
18 receipt of a written request for indemnification by the cooperative, whichever occurs
19 earlier, a person seeking indemnification under sub. (2) or payment or
20 reimbursement of expenses under sub. (3) may petition the circuit court for a
21 determination of the person's eligibility for indemnification, payment, or
22 reimbursement, if a determination is made under par. (a) or (b) that the person is
23 ineligible, or if no determination is made under par. (a) or (b). The court shall order
24 the cooperative to indemnify the person if indemnification is required under sub. (2)
25 and, if applicable, shall order the cooperative to pay or reimburse the person's

ASSEMBLY BILL 1186

1 expenses if the payment or reimbursement is required under sub. (3). In addition,
2 if the person is a director or officer of the cooperative, the court shall order the
3 cooperative to indemnify the person if, in view of all the relevant circumstances, the
4 person is fairly and reasonably entitled to indemnification, regardless of whether
5 indemnification is required under sub. (2). In a proceeding under this paragraph, the
6 person seeking indemnification, payment, or reimbursement has the burden of
7 establishing that indemnification is required or that the person is entitled to
8 payment or reimbursement of expenses.

9 **(7m) EXPENSES OF OBTAINING COURT-ORDERED INDEMNIFICATION.** If the court, in
10 a proceeding under sub. (6) (c), determines that the cooperative unreasonably
11 refused a director's or officer's request for indemnification under sub. (2), the court
12 shall order the cooperative to pay the officer's or director's reasonable expenses
13 incurred to obtain the court-ordered indemnification.

14 **(9) INSURANCE.** A cooperative may purchase and maintain insurance on behalf
15 of a person in that person's official capacity against any liability asserted against and
16 incurred by the person in or arising from that capacity, whether or not the
17 cooperative would be required to indemnify the person against the liability under
18 sub. (2).

19 **(10) DISCLOSURE.** A cooperative that indemnifies or advances expenses to a
20 person under sub. (2) or (3) shall report to the members in writing the amount of the
21 indemnification or advance and to whom and on whose behalf it was paid not later
22 than the date of the first members' meeting occurring after the payment.

23 **(11) INDEMNIFICATION OF OTHER PERSONS.** This section does not limit the power
24 of a cooperative to indemnify persons who do not act in an official capacity.

ASSEMBLY BILL 1186**SECTION 78**

1 **193.475 Officers. (1) REQUIRED OFFICERS.** (a) The board shall elect a
2 chairperson and one or more vice-chairpersons.

3 (b) Except as provided in sub. (3), the board shall elect or appoint a records
4 officer and a financial officer.

5 **(2) CHIEF EXECUTIVE AND ADDITIONAL OFFICERS.** The board may employ a chief
6 executive officer to manage the day-to-day affairs and business of the cooperative.
7 The board may elect additional officers as the articles or bylaws authorize or require.

8 **(3) RECORDS OFFICER AND FINANCIAL OFFICER MAY BE COMBINED.** The offices of
9 records officer and financial officer may be combined.

10 **(4) OFFICERS THAT SHALL BE DIRECTORS AND MEMBERS.** The chairperson and first
11 vice-chairperson shall each be a director and member. The financial officer, records
12 officer, and additional officers need not be directors or members.

13 **193.478 Director Education.** A director shall annually attend a course in at
14 least 2 of the following topics offered by a recognized provider of cooperative director
15 education:

16 **(1)** Duties and responsibilities of a cooperative director.

17 **(2)** Board and management relations.

18 **(3)** The board's role in defining and developing cooperative policies.

19 **(4)** Understanding cooperative governance and structure.

20 **(5)** Understanding financial statements, key financial ratios, and control tools.

21 **(6)** Cooperative finance and equity redemption.

22 **(7)** Cooperative strategic planning.

23 **(8)** Cooperative membership communication and education.

24 **(9)** Selecting and evaluating principal cooperative management.

25 **(10)** Board evaluation.

ASSEMBLY BILL 1186

1 **(11)** Analyzing and understanding the current cooperative business
2 environment.

SUBCHAPTER V**MEMBERS**

3
4
5 **193.501 Members. (1) REQUIREMENT.** A cooperative shall have at least one
6 patron member, except that if any patron member is a natural person, a cooperative
7 shall have at least 5 patron members who are natural persons and who are adults.
8 A cooperative may have nonpatron members if the patron members by majority vote
9 approve an article, bylaw provision, or amendment provision authorizing nonpatron
10 members.

11 **(2) GROUPING OF MEMBERS.** (a) A cooperative may group members in districts
12 or units, or on another basis, to the extent authorized in the articles or bylaws. The
13 articles or bylaws may authorize the board to determine the grouping of members.

14 (b) The board may take all steps necessary to implement the use of groupings
15 established under par. (a), including setting the time and place and prescribing the
16 rules of conduct for holding meetings by group to elect delegates to members'
17 meetings.

18 **(3) MEMBER VIOLATIONS.** (a) A member who knowingly, intentionally, or
19 repeatedly violates a provision of the articles or bylaws, or a member control
20 agreement or marketing contract with the cooperative, may be required by the board
21 to surrender the member's membership interest in the cooperative or any of the
22 following portions of the member's membership interest:

23 1. Governance rights and right to assign governance rights.

24 2. Financial rights and right to assign financial rights.

ASSEMBLY BILL 1186**SECTION 78**

1 (b) 1. Except as provided in subd. 2., if the board requires a member to
2 surrender the member's membership interest or the rights described in par. (a) 2.,
3 the cooperative shall refund to the member the lesser of the book value or market
4 value of the membership interest or rights, as applicable, payable in not more than
5 7 years from the date of surrender.

6 2. If the board requires a patron member to surrender the patron member's
7 rights described in par. (a) 2., the board may transfer all of those rights to a class of
8 financial rights held by members who are not patron members, or to a certificate of
9 interest that carries liquidation rights on par with membership interests and that
10 must be redeemed within 7 years after the transfer as provided in the certificate.

11 (c) The board may reissue or retire and cancel any membership interests
12 required to be surrendered under par. (a).

13 **(4) INSPECTION OF COOPERATIVE RECORDS BY MEMBER.** (a) Except as otherwise
14 provided in this paragraph and pars. (d) and (e), a member may inspect and copy any
15 of the records described in s. 193.245 if the member meets the requirements of par.
16 (b). A member's agent or attorney has the same inspection and copying rights under
17 this paragraph as the member. No member may inspect or copy any records of the
18 cooperative relating to the amount of equity capital in the cooperative held by any
19 person or any accounts receivable or other amounts due the cooperative from any
20 person, or any personnel records or employment records relating to any employee of
21 the cooperative, unless the member is a director or officer acting pursuant to
22 authority of the board. Except as provided under par. (e), records shall be inspected
23 and copied under this paragraph during regular business hours at a reasonable
24 location specified by the cooperative.

ASSEMBLY BILL 1186

1 (b) A member may inspect and copy records under par. (a) if all of the following
2 apply:

3 1. The member has been a member for at least one year immediately preceding
4 the demand to inspect or copy or holds at least 5 percent of all of the outstanding
5 equity interests in the cooperative as of the date the demand is made.

6 2. The member gives the cooperative a written demand to inspect or copy at
7 least 5 business days before the date on which the member wishes to inspect or copy
8 the records.

9 3. The written demand describes with reasonable particularity the purpose for
10 which the demand is made and the records the member desires to inspect or copy.

11 4. The demand is made in good faith and for a proper cooperative business
12 purpose.

13 5. The records are directly connected with the described purpose.

14 (d) This section does not affect any of the following:

15 1. The right of a member to inspect records to the same extent as any other
16 litigant if the member is in litigation with the cooperative.

17 2. The power of a court to compel the production of the cooperative's records for
18 examination.

19 (e) If records to be inspected or copied under par. (a) are in active use or storage
20 and, therefore, not available at the time otherwise provided under par. (a) for
21 inspection or copying, the cooperative shall so notify the member and establish a date
22 and time for the inspection or copying that is within 3 business days of the date
23 otherwise provided under par. (a) for inspection or copying.

24 (f) The right to copy records under par. (a) includes, if reasonable, the right to
25 receive copies from the cooperative. The cooperative may impose a reasonable charge

ASSEMBLY BILL 1186**SECTION 78**

1 for copies of any records provided to the member. The charge may not exceed the
2 estimated cost of production and reproduction of the records. Any copies made by the
3 member shall be made at the member's expense.

4 (g) If a cooperative refuses to allow a person to inspect or copy records that the
5 person is entitled to inspect or copy under par. (a) within any time period prescribed
6 under par. (e) or, if none, within a reasonable time, the person may petition the circuit
7 court for the county where the cooperative's principal office is located or, if it has no
8 principal office in this state, for the county in which the cooperative's registered office
9 is located, for an order compelling the cooperative to permit the inspection or copying.

10 A court that issues an order under this paragraph may impose reasonable
11 restrictions on the use or distribution of the records by the person. A court that issues
12 an order under this paragraph may do any of the following, unless the cooperative
13 proves that it refused inspection or copying in good faith because it had a reasonable
14 basis for doubt about the right of the person to inspect or copy the records under par.

15 (a):

16 1. Order the cooperative to pay the person's reasonable costs in obtaining the
17 order, including reasonable attorney fees.

18 2. Order the cooperative to pay the person for any damages the person incurred
19 by reason of the cooperative's refusal to permit inspection or copying.

20 3. Order the cooperative to pay the member's inspection and copying expenses,
21 notwithstanding par. (f).

22 5. Impose reasonable restrictions on the use or distribution of the records by
23 the person.

24 **193.505 Member liability.** A person is not personally liable for the acts, debts,
25 liabilities, or obligations of a cooperative merely because of the person's status as a

ASSEMBLY BILL 1186

1 member. A member is liable for any unpaid subscription for the member's
2 membership interest, unpaid membership fees, or any debt for which the member
3 has separately contracted with the cooperative.

4 **193.511 Regular members' meetings. (1) ANNUAL MEETING.** A regular
5 members' meeting shall be held annually at a time determined by the board, unless
6 the articles or bylaws provide otherwise.

7 **(2) LOCATION.** The regular members' meeting shall be held at the principal
8 place of business of the cooperative or at another conveniently located place as
9 determined by the board or under the articles or bylaws.

10 **(3) BUSINESS AND FISCAL REPORTS.** The officers shall submit reports to the
11 members at the regular members' meeting covering the business of the cooperative
12 for the previous fiscal year and indicating the condition of the cooperative at the close
13 of the fiscal year.

14 **(5) NOTICE.** Except as otherwise provided in this subsection, sub. (6), and s.
15 193.553, the cooperative shall mail a notice of the regular members' meeting to each
16 member at the member's last known address. The cooperative shall deposit the
17 notice in the mail at least 15 days before the date of the meeting. In lieu of mailing,
18 the cooperative may provide notice of the meeting by any means approved by the
19 board and agreed to by the members. The cooperative shall provide any such notice
20 at least 2 weeks before the date of the meeting. Any notice provided to an entity
21 under this subsection shall be addressed or directed to an officer of the entity.

22 **(6) WAIVER AND OBJECTION.** A member may waive notice of a regular members'
23 meeting. A waiver is effective whether given before, at, or after the meeting, and
24 whether given in writing, orally, or by attendance. Attendance by a member at a
25 regular members' meeting is a waiver of notice of that meeting, except where the

ASSEMBLY BILL 1186**SECTION 78**

1 member objects at the beginning of the meeting to the transaction of business
2 because the meeting is not lawfully called or convened and does not participate in the
3 meeting after the objection, or objects before a vote on an item of business at the
4 meeting because the item may not lawfully be considered at the meeting and does
5 not participate in the consideration of the item at the meeting.

6 **193.515 Special members' meetings. (1) CALLING A MEETING.** A special
7 members' meeting may be called by any of the following means:

8 (a) By the board.

9 (b) By petition of the members under this paragraph. Except as otherwise
10 provided in this paragraph, the chairperson of the board shall call a special members'
11 meeting if a written petition requesting the meeting is signed by at least 20 percent
12 of the patron members and is submitted to the chairperson. Unless the articles or
13 bylaws provide otherwise and except as otherwise provided in this paragraph, the
14 chairperson of the board shall call a special members' meeting if a written petition
15 requesting the meeting is signed by at least 20 percent of the nonpatron members,
16 20 percent of all members, or members representing 20 percent of all membership
17 interests and is submitted to the chairperson. A special members' meeting held
18 under this paragraph shall be held within 30 days after submission of the petition
19 to the chairperson. This paragraph does not authorize any meeting that is unrelated
20 to a proper cooperative purpose.

21 **(2) NOTICE.** Except as otherwise provided in this subsection, sub. (3), and s.
22 193.553, the cooperative shall mail a notice of any special members' meeting to each
23 member at the member's last known address. In lieu of mailing, the cooperative may
24 provide notice of the meeting by any means approved by the board and agreed to by
25 the members. Any notice provided to an entity under this subsection shall be

ASSEMBLY BILL 1186

1 addressed or directed to an officer of the entity. Any notice provided under this
2 subsection shall state the time, place, and purpose of the meeting. Any notice
3 provided under this subsection shall be given at least 10 days before the date of the
4 meeting.

5 **(3) WAIVER AND OBJECTION.** A member may waive notice of a special members'
6 meeting. A waiver is effective whether given before, at, or after the meeting, and
7 whether given in writing, orally, or by attendance. Attendance by a member at a
8 special members' meeting is a waiver of notice of that meeting, except where the
9 member objects at the beginning of the meeting to the transaction of business
10 because the meeting is not lawfully called or convened and does not participate in the
11 meeting after the objection, or objects before a vote on an item of business at the
12 meeting because the item may not lawfully be considered at the meeting and does
13 not participate in the consideration of the item at the meeting.

14 **193.518 Effect of insufficient notice.** Failure of a member to receive a notice
15 required under s. 193.511 (5) or 193.515 (2) does not invalidate any action that is
16 taken at the applicable meeting.

17 **193.521 Certification of notice. (1) CERTIFICATE REQUIRED.** After mailing
18 or otherwise providing notices required under s. 193.511 (5) or 193.515 (2), the
19 cooperative shall execute a certificate containing the date of mailing or provision of
20 the notices and a statement that the notices were mailed or provided as required
21 under s. 193.511 (5) or 193.515 (2), as applicable.

22 **(2) MATTER OF RECORD.** The cooperative shall include the certificate under sub.
23 (1) in the record of the meeting to which the certificate relates.

24 **193.523 Electronic notice. (1) EFFECTIVE DATE OF ELECTRONIC NOTICE.** Any
25 notice given by a cooperative to members in electronic format takes effect as follows:

ASSEMBLY BILL 1186**SECTION 78**

1 (a) If by facsimile communication, when directed to a telephone number at
2 which the member has consented to receive notice.

3 (b) If by electronic mail, when directed to an electronic mail address at which
4 the member has consented to receive notice.

5 (c) If by a posting on an electronic network on which the member has consented
6 to receive notice, upon the later to occur of the posting and the giving of a separate
7 notice to the member of the specific posting.

8 (d) If by any other means to which the member has consented, when directed
9 to the member pursuant to that means.

10 **(2) AFFIDAVIT.** An affidavit of the secretary of the board, other authorized
11 officer, or authorized agent of the cooperative, indicating that a notice has been given
12 in electronic format under sub. (1) is, in the absence of fraud, prima facie evidence
13 that the notice was so given.

14 **(3) CONSENT.** If a member consents to the receipt of notice in electronic format,
15 the member shall deliver a statement to that effect in writing to the cooperative. A
16 statement under this subsection is effective until it is revoked by the member. A
17 revocation under this subsection does not affect the validity of any notice given before
18 receipt by the cooperative of the revocation.

19 **193.524 Revocation of electronic communication.** A member may revoke
20 any vote, authorization, or consent submitted in electronic format by the member to
21 a cooperative under this chapter by delivering a notice of revocation to a director or
22 the chief executive officer of the cooperative before the vote is counted or the
23 authorization or consent is relied upon.

24 **193.525 Quorum at members' meeting. (1) GENERALLY; PRESENCE OF**
25 **OBJECTING MEMBER.** Unless the articles or bylaws provide otherwise and except as

ASSEMBLY BILL 1186

1 provided in sub. (2m), a quorum for the transaction of business at a members'
2 meeting is 10 percent of the total number of members for a cooperative with 100 or
3 less members and 15 percent of the total number of members for all other
4 cooperatives. The attendance of a sufficient number of members to constitute a
5 quorum shall be established by a registration of the members present at the meeting.
6 The registration shall be verified by the chairperson of the board or the records officer
7 of the cooperative and shall be reported in the minutes of the meeting. Any member
8 who objects at the beginning of a members' meeting to the transaction of business
9 because the meeting is not lawfully called or convened and who fails to participate
10 in the meeting after the objection may not be considered as present at the meeting
11 for purposes of determining whether a quorum is present.

12 **(2) QUORUM FOR VOTING BY MAIL OR ALTERNATIVE BALLOT.** Except as provided in
13 s. 193.531 (2), in determining whether a quorum is present at a members' meeting
14 for purposes of conducting a vote on a question that members may vote on by mail
15 or alternative ballot, the number of members physically present at the meeting shall
16 be added to the number of members voting by mail or alternative ballot.

17 **(2m) QUORUM FOR VOTES BY CLASS OR SERIES.** Except as otherwise provided in
18 the articles or bylaws or a member control agreement, if a vote at a members' meeting
19 is open only to holders of a particular class or series of membership interests, a
20 quorum for conducting the vote is a number of members holding 10 percent of the
21 voting power of the class or series for a cooperative with 100 or less members and a
22 number of members holding 15 percent of the voting power of the class or series for
23 all other cooperatives.

24 **(3) MEETING ACTION INVALID WITHOUT QUORUM.** An action taken or approved at
25 a members' meeting by vote of the members is invalid if a quorum is not present at

ASSEMBLY BILL 1186**SECTION 78**

1 the time of the vote, unless approval of the members is not required under this
2 chapter, the articles, or the bylaws.

3 **193.531 Virtual members' meetings and attendance. (1) CONSTRUCTION**
4 **AND APPLICATION.** This section shall be construed and applied as follows:

5 (a) To facilitate remote communication consistent with other applicable law.

6 (b) To be consistent with reasonable practices concerning remote
7 communication and with the continued expansion of those practices.

8 **(2) VIRTUAL MEMBERS' MEETINGS AND ATTENDANCE.** To the extent authorized in
9 the articles or bylaws or, unless prohibited by the articles or bylaws, in a member
10 control agreement, and as determined by the board, a members' meeting may be held
11 such that all members participate in the meeting by a means of communication
12 rather than by being physically present at the meeting. To the extent authorized in
13 the articles or bylaws or, unless prohibited by the articles or bylaws, in a member
14 control agreement, and as determined by the board, a member may participate in a
15 members' meeting at which other members are physically present by a means of
16 communication rather than by being physically present at the meeting. A meeting
17 may be held or a member may participate in a meeting as authorized under this
18 subsection only if the requirements of sub. (4) are satisfied. The number of members
19 physically present at a meeting, if any, shall be added to the number of members
20 otherwise participating in the meeting under this subsection to determine whether
21 a quorum is present under s. 193.525, except that any member who objects at the
22 beginning of the meeting to the transaction of business because the meeting is not
23 lawfully called or convened and who fails to participate in the meeting after the
24 objection may not be considered as present at the meeting for purposes of
25 determining whether a quorum is present.

ASSEMBLY BILL 1186

1 **(4) REQUIREMENTS FOR VIRTUAL MEETINGS AND ATTENDANCE.** All of the following
2 apply to any meeting held under sub. (2):

3 (a) The cooperative shall implement reasonable measures to verify that each
4 person participating in the meeting by a means of communication is a member.

5 (b) The cooperative shall implement reasonable measures to provide each
6 member participating in the meeting by a means of communication with a
7 reasonable opportunity to actively participate, including an opportunity to do all of
8 the following:

9 1. Read or hear the proceedings of the meeting substantially concurrently with
10 those proceedings.

11 2. If allowed by the procedures governing the meeting, have the member's
12 remarks heard or read by other participants in the meeting substantially
13 concurrently with the making of those remarks.

14 3. If otherwise entitled, vote on matters submitted to the members.

15 **193.535 Actions of the members. (1) GENERALLY.** Unless this chapter
16 provides otherwise and except as provided in sub. (2m) and s. 193.545 (1) (a) and (4),
17 the members shall take action by the affirmative vote of the greater of the following:

18 (a) A majority of the voting power of the membership interests present and
19 entitled to vote on that item of business.

20 (b) A majority of the voting power that would constitute a quorum for the
21 transaction of business at the meeting or for conducting the vote.

22 (c) The proportion of voting power specified in this chapter, the articles or
23 bylaws, or a member control agreement as necessary for that item of business.

24 **(2m) EXCEPTION FOR OBJECTING MEMBER.** Any member who objects at the
25 beginning of a members' meeting to the transaction of business because the meeting

ASSEMBLY BILL 1186**SECTION 78**

1 is not lawfully called or convened and who fails to participate in the meeting after
2 the objection may not be considered as present at the meeting for purposes of sub.
3 (1).

4 **193.541 Actions without a members' meeting. (1) GENERALLY.** (a) Unless
5 the articles or bylaws provide otherwise, any action required or permitted by this
6 chapter to be authorized at a members' meeting may be authorized without a
7 meeting if that action is authorized by all members and is evidenced by one or more
8 written statements, signed by each member, describing and consenting to the action.
9 Such an action has the same effect as an action authorized by unanimous vote at a
10 members' meeting at which all members are present and may be described as such
11 in any document.

12 (b) The articles or bylaws may allow the members to authorize any other action
13 on behalf of the cooperative, other than an action requiring board approval, without
14 a members' meeting, if the action is authorized by the number of members that would
15 be required to approve the action at a members' meeting at which all members were
16 present and if the action is evidenced by one or more written statements, signed by
17 each authorizing member, describing and consenting to the action. Such an action
18 has the same effect as an action authorized by vote of the number of authorizing
19 members at a meeting at which all members are present and may be described as
20 such in any document.

21 **(2) EFFECTIVE DATE.** Any action authorized under sub. (1) is effective when the
22 last member necessary for authorization signs the statement evidencing his or her
23 consent, unless the statement specifies a different effective date.

24 **(3) NOTICE AND LIABILITY.** When an action is taken under sub. (1) (b) with the
25 authorization of less than all members, the board shall ensure that all other

ASSEMBLY BILL 1186

1 members are notified immediately of the action and its effective date. Failure to
2 provide the notice does not invalidate the action. A member who does not authorize
3 an action taken under sub. (1) (b) may not be held liable as a result of the action.

4 (4) RECORDS. A cooperative shall retain all statements signed by its members
5 under sub. (1).

6 **193.545 Member voting rights. (1) GENERALLY.** (a) Each patron member
7 has one vote on each issue that patron members may vote upon. Nonpatron
8 members, if authorized by the patron members, may or may not have voting rights
9 relating to being a nonpatron member or holding nonpatron membership interests.
10 If voting rights are granted to nonpatron members or to nonpatron membership
11 interests, patron members may not have less voting rights than provided in this
12 section. The collective vote of the patron members shall be determined by the vote
13 of the majority of patron members voting on the issue. Except as provided under s.
14 193.551, in determining the collective vote of patron members, each patron member
15 has one vote on the issue. Unless the articles or bylaws provide otherwise, no issue
16 that patron members may vote upon may be approved unless, in determining the
17 collective vote of the patron members, the number of patron members voting to
18 approve the issue is a majority of all members voting on the issue. The articles or
19 bylaws may not reduce the collective patron member vote to less than 51 percent of
20 the total member vote.

21 (b) Except as otherwise provided in this chapter, a nonpatron member has the
22 voting rights granted to members holding nonpatron membership interests in the
23 articles or bylaws.

ASSEMBLY BILL 1186**SECTION 78**

1 **(2) VOTING AT A MEMBERS' MEETING.** A member may vote at a members' meeting
2 at any time from the time the member arrives at the meeting to the time the meeting
3 is adjourned, unless the articles or bylaws specify an earlier time for closing the vote.

4 **(3) VOTING METHOD.** (a) Except as otherwise provided in this paragraph, a
5 member may vote only by casting a ballot at a meeting, by delegate as provided under
6 sub. (4), by proxy as provided under s. 193.565, or, if authorized by the board, by
7 mailing a ballot or by using an alternative ballot.

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

9 (c) To cast a ballot by mail, a member shall mark the member's choice on the
10 ballot, seal the ballot in a plain envelope bearing the member's name and the words
11 "BALLOT ENCLOSED," or similar words, and enclose that envelope in another
12 envelope addressed to the cooperative. To cast an alternative ballot, a member shall
13 follow the procedure prescribed by the board.

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

18 **(4) MEMBERS REPRESENTED BY DELEGATES.** For a cooperative with districts or
19 other units, the articles or bylaws may provide that members from the districts or
20 other units be represented at members' meetings by delegates chosen by those
21 members. A delegate representing patron members shall be a patron member.
22 Except as provided in s. 193.551 (2) and as otherwise provided in this subsection, a
23 delegate may vote in the same manner as and to the same extent as the members
24 collectively whom the delegate represents are otherwise authorized to vote.

ASSEMBLY BILL 1186

1 **193.551 Patron member voting based on patronage. (1)** ADDITIONAL VOTE
2 PERMITTED. (a) The articles or bylaws may authorize patron members to have an
3 additional vote in determining the collective vote of patron members under s.
4 193.545 (1) (a) as provided in this subsection.

5 (b) The articles or bylaws may grant a patron member an additional vote under
6 par. (a) if the issue to be voted upon relates to a specified amount of business
7 transacted between the patron member and the cooperative.

8 (c) The articles or bylaws may grant additional votes under par. (a) to a
9 specified number of patron members who are also patron members of another
10 cooperative that is itself a member of the cooperative.

11 (d) The articles or bylaws may grant additional votes under par. (a) to a patron
12 member that is a cooperative, based on the amount of equity allocated to or held by
13 the patron member in the cooperative.

14 **(2) ADDITIONAL VOTES FOR DELEGATES.** (a) For a cooperative with districts or
15 other units of patron members, the articles or bylaws may authorize a delegate
16 elected by patron members to have additional votes as provided in this subsection
17 in determining the collective vote of patron members under s. 193.545 (1) (a).

18 (b) The articles or bylaws may grant a delegate an additional vote under par.
19 (a) based on a specified amount of business transacted between the patron members
20 represented by the delegate and the cooperative.

21 (c) The articles or bylaws may grant a delegate an additional vote under par.
22 (a) based upon the amount of equity allocated to or held by the patron members
23 represented by the delegate.

24 **193.553 Voting rights limited to members as of date certain.** The board
25 may establish a date for the determination of membership interests entitled to notice

ASSEMBLY BILL 1186**SECTION 78**

1 of and entitled to vote at a members' meeting. The date established by the board may
2 not be more than 60 days before the date of the meeting. If a date is established under
3 this subsection, only members as of that date are entitled to notice of and may vote
4 at that meeting.

5 **193.555 Voting rights of nonmembers.** The articles or bylaws may
6 authorize any nonmember or class of nonmembers to vote at a members' meeting in
7 the same manner as patron members are permitted to vote. The articles or bylaws
8 may prescribe the manner by which persons are authorized to vote under this
9 section.

10 **193.557 Voting of jointly owned membership interests.** If a membership
11 interest is owned jointly by 2 or more persons, any one of the owners may vote based
12 upon that membership interest, unless the cooperative receives written notice from
13 any of the owners denying the authority of that person to vote based upon that
14 membership interest.

15 **193.559 Cumulative voting by members.** Except as provided in ss. 193.411
16 (4m) and 193.557, a member with more than one vote that is entitled to vote may
17 allocate the member's votes in any way the member chooses. If such a member votes
18 without designating an allocation, the member is considered to have voted all of the
19 member's votes in that way.

20 **193.561 Voting by business entities, subsidiaries, legal**
21 **representatives, and holders of security interests. (1) MEMBERSHIP INTERESTS**
22 **HELD BY A BUSINESS ENTITY.** If a member entitled to vote is a business entity, the
23 chairperson of the board, chief executive officer, or other authorized agent of the
24 member may cast the member's votes.

ASSEMBLY BILL 1186

1 **(2) MEMBERSHIP INTEREST HELD BY SUBSIDIARY OF COOPERATIVE.** Except as
2 provided in the articles or bylaws or sub. (3), if a member is a subsidiary of the
3 cooperative, the member may not vote.

4 **(3) MEMBERSHIP INTEREST HELD IN FIDUCIARY CAPACITY BY COOPERATIVE.**
5 Membership interests held in a fiduciary capacity by the cooperative or a subsidiary
6 of the cooperative are not entitled to vote, except to the extent that the settlor or
7 beneficiary is entitled to vote and either exercises the right to vote or instructs the
8 cooperative or subsidiary on how to vote.

9 **(4) MEMBERSHIP INTEREST CONTROLLED BY CERTAIN REPRESENTATIVES.** Except as
10 provided in subs. (3) and (5), if a person, in the capacity of a personal representative,
11 administrator, executor, guardian, or conservator, or in a similar capacity, controls
12 the membership interest of a member entitled to vote, the person may vote on behalf
13 of the member.

14 **(5) MEMBERSHIP INTEREST CONTROLLED BY TRUSTEE IN BANKRUPTCY OR RECEIVER.**
15 If a trustee in bankruptcy or a receiver controls the membership interest of a member
16 entitled to vote, the trustee or receiver may vote on behalf of the member if
17 authorized to do so by the court appointing the trustee or receiver.

18 **(7) HOLDERS OF SECURITY INTEREST.** The granting of a security interest in a
19 membership interest does not entitle the holder of the security interest to vote.

20 **193.565 Voting by proxy. (1) AUTHORIZATION AND APPOINTMENT OF PROXY.** (a)
21 A member entitled to vote may do so by proxy appointed under this paragraph.
22 Except as provided in sub. (7), a member may grant a proxy to vote by giving the
23 board or an authorized agent of the cooperative an appointment of a proxy, in writing,
24 before the meeting at which the appointment is to be effective. If the appointment
25 of proxy is given in electronic format, the appointment is effective only if an

ASSEMBLY BILL 1186**SECTION 78**

1 authorized agent of the cooperative determines that the appointment is authorized
2 by the member. The authorized agent shall record the information upon which he
3 or she relied to make the determination. A proxy appointed under this paragraph
4 may vote in the same manner as and to the same extent as the appointing member
5 is otherwise authorized to vote, consistent with subs. (5) and (7).

6 (b) A reproduction of the original written appointment under par. (a) may be
7 substituted or used in lieu of the original for any purpose for which the original could
8 be used, if the reproduction is a complete, legible, and accurate reproduction of the
9 entire original.

10 (c) If a membership interest is owned jointly by 2 or more members, any one
11 of the owners may appoint a proxy under par. (a), unless the cooperative receives
12 written notice from any of the owners denying the authority of that person to appoint
13 a proxy or appointing a different proxy.

14 **(2) DURATION OF APPOINTMENT.** The appointment of a proxy under sub. (1) (a)
15 is valid for 11 months, unless a longer period is expressly provided in the
16 appointment or unless the appointment is terminated under sub (3).

17 **(3) TERMINATION.** An appointment of a proxy under sub. (1) (a) may be
18 terminated at will by the appointing member or the proxy, unless the appointment
19 is conditioned upon ownership of or subject to terms and conditions of a membership
20 interest. Except as provided in sub. (4), an appointment that is coupled with a
21 membership interest as described in this subsection is irrevocable and may not be
22 terminated, unless an agreement between the appointing member and the proxy
23 specifies otherwise. A termination under this subsection is effective upon filing
24 written notice of the termination with an authorized agent of the cooperative or filing
25 a new appointment under sub. (1) (a), whichever occurs first.

ASSEMBLY BILL 1186

1 **(4) REVOCATION BY DEATH OR INCAPACITY.** The death or incapacity of a member
2 appointing a proxy under sub. (1) (a) does not revoke the appointment, unless written
3 notice of the death or incapacity is received by an authorized agent of the cooperative
4 before the proxy exercises the authority under the appointment.

5 **(5) MULTIPLE PROXIES.** Except as provided in sub. (7), all of the following apply
6 if 2 or more persons are appointed as proxies for a member under sub. (1) (a):

7 (a) Only one of them may vote on behalf of the member on each item of business
8 in accordance with specific instructions contained in the appointment.

9 (b) If no specific instructions are contained in the appointment with respect to
10 a particular item of business, the vote of the member shall be cast as a majority of
11 the proxies determine. If the proxies are equally divided in determining how such
12 a vote shall be cast, no vote may be cast.

13 **(6) LIABILITY OF PROXY.** A proxy appointed under sub. (1) (a) is liable to the
14 appointing member for damages resulting from the proxy's failure to exercise his or
15 her authority or from the proxy's acting in violation of the authority granted in the
16 appointment.

17 **(7) LIMITATIONS ON PROXIES.** (a) A patron member may only appoint another
18 patron member as a proxy under sub. (1) (a).

19 (b) No member may vote by proxy under sub. (1) (a) if the member is
20 represented by a delegate under s. 193.545 (4).

21 (c) No member may vote by proxy under sub. (1) (a) in an election of directors
22 under s. 193.411 (3) or (4).

23 (d) If an appointment of a proxy under sub. (1) (a) gives the proxy authority to
24 vote on less than all items of business considered at a meeting, the appointing

ASSEMBLY BILL 1186**SECTION 78**

1 member may vote by proxy only with respect to those items of business for which the
2 proxy has authority to vote.

3 (e) An appointment of a proxy under sub. (1) (a) may restrict or limit the
4 authority of the proxy or reserve authority for the appointing member.

5 **193.571 Member authority concerning certain cooperative property.**

6 Except as provided in s. 193.443, a cooperative may sell, lease, transfer, or otherwise
7 dispose of all or substantially all of its property and assets, including its good will,
8 not in the usual and regular course of its business, upon those terms and conditions
9 that the board considers expedient, when approved by the affirmative vote of the
10 members owning a majority of the voting power of the interests entitled to vote and
11 by the board. Notwithstanding s. 193.511 (6), 193.515 (3), and 193.553, written
12 notice of any members' meeting at which a vote will be taken under this section shall
13 be given to all members. The written notice shall state that a purpose of the meeting
14 is to consider the sale, lease, transfer, or other disposition of all or substantially all
15 of the property and assets of the cooperative.

16 SUBCHAPTER VI

17 MEMBERSHIP INTERESTS

18 **193.601 Membership interests. (1) AMOUNTS AND DIVISIONS OF MEMBERSHIP**
19 **INTERESTS.** To the extent permitted under this chapter, a cooperative may increase,
20 decrease, establish, or alter the authorized amount and divisions of membership
21 interests by amending the articles under s. 193.221 or the bylaws under s. 193.241.

22 **(2) ISSUANCE AND ACQUISITION OF MEMBERSHIP INTERESTS GENERALLY.** A
23 cooperative may issue authorized membership interests on terms and conditions
24 prescribed in the articles or bylaws or, if authorized in the articles or bylaws, on terms
25 and conditions determined by the board. The cooperative shall disclose to any person

ASSEMBLY BILL 1186

1 to whom a membership interest is issued, before issuance, the organizational and
2 capital structure of the cooperative, known business prospects and risks of the
3 cooperative, and the nature of the governance and financial rights of the membership
4 interest being acquired and of other classes of membership and membership
5 interests. The cooperative shall notify all members, before issuance, of any
6 membership interest issued by the cooperative. The cooperative may not issue a
7 membership interest to any person unless the subscription price of the membership
8 interest has been paid for in money or property. If the subscription price is paid for
9 in property, the value of the property to be contributed shall be approved by the
10 board.

11 **(3) TRANSFERRING OWNERSHIP OF MEMBERSHIP INTERESTS.** After issuance by the
12 cooperative, ownership of a membership interest may be transferred only with the
13 approval of the board. The board may adopt resolutions prescribing procedures to
14 approve transfers prospectively.

15 **(4) PATRON MEMBERSHIP INTERESTS.** Except as otherwise provided in this
16 subsection, if nonpatron membership interests are authorized by the patron
17 members, all patron membership interests, collectively, shall have not less than 51
18 percent of the cooperative's financial rights to profit allocations and distributions.
19 The patron members by majority vote may authorize that the patron membership
20 interests, collectively, may have less than 51 percent, but not less than 30 percent,
21 of the cooperative's financial rights to profit allocations and distributions, and this
22 change must be included in the bylaws. Notwithstanding s. 193.221 (1) and (3), an
23 amendment of the articles under this subsection may be adopted only if approved by
24 the affirmative vote of the patron members.

ASSEMBLY BILL 1186**SECTION 78**

1 **(5) FIRST PRIVILEGE TO PURCHASE MEMBERSHIP INTERESTS.** The articles or bylaws
2 may provide the patron members, individually or collectively, or the cooperative with
3 the first privilege of purchasing the membership interests of any class of
4 membership interests offered for sale. If the articles or bylaws provide patron
5 members with a first privilege to purchase membership interests under this
6 subsection, the articles or bylaws shall include a procedure by which patron
7 members may proceed to acquire the membership interests. If the cooperative
8 acquires a membership interest under this subsection, the cooperative may hold the
9 interest to be reissued or may retire and cancel the interest.

10 **(6) NONPATRON MEMBERSHIP INTERESTS.** If nonpatron membership interests are
11 authorized by the patron members, each person to whom a nonpatron membership
12 interest is issued shall sign a member control agreement or a statement agreeing to
13 abide by any applicable conditions imposed under the bylaws. Unless the bylaws
14 contain a sufficient description, the cooperative shall provide to a person to whom a
15 nonpatron membership interest is issued, before issuance, a description of the rights
16 and obligations applicable to holders of that nonpatron membership interest, the
17 transferability of that nonpatron membership interest, and the manner in which
18 profits and losses are divided and allocated among the membership interests and
19 membership classes.

20 **(6m) ALLOCATION OF PROFITS, LOSSES, AND DISTRIBUTIONS.** If the articles or bylaws
21 do not otherwise provide for the allocation of the profits and losses between patron
22 membership interests and any authorized nonpatron membership interests, then
23 the allocation of profits and losses among nonpatron membership interests
24 individually and patron membership interests collectively shall be allocated based
25 on the value of contributions to capital made according to the patron membership

ASSEMBLY BILL 1186

1 interests collectively and the nonpatron membership interests individually to the
2 extent the contributions have been accepted by the cooperative. Distributions of cash
3 or other assets of the cooperative shall be allocated among the membership interests
4 as provided in the articles and bylaws, subject to the provisions of this chapter. If not
5 otherwise provided in the articles or bylaws, distributions shall be made on the basis
6 of value of the capital contributions of the patron membership interests collectively
7 and the nonpatron membership interests to the extent the contributions have been
8 accepted by the cooperative.

9 (7) REACQUISITION OF NONPATRON MEMBERSHIP INTERESTS AFTER DISSENT. Unless
10 the articles or bylaws provide otherwise, a nonpatron member may force the
11 cooperative to acquire the member's nonpatron membership interests as provided
12 under this subsection if the articles or bylaws are amended in a manner that
13 materially and adversely affects the rights and preferences applicable to the
14 nonpatron membership interests of the nonpatron member. If approval of the
15 amendment is not required of the members, the nonpatron member shall file a notice
16 of dissent and intent to demand fair value of the membership interests with the
17 cooperative within 30 days after the date on which notice of the amendment is given
18 to members. If approval of the amendment is required of the members, the
19 nonpatron member shall file a notice of dissent and intent to demand fair value of
20 the membership interests with the cooperative before the vote on the proposed
21 amendment and shall not vote in favor of the proposed amendment. After receipt of
22 a notice under this subsection and, if applicable, after approval of the amendment,
23 the cooperative shall rescind the amendment within 60 days after receipt of the
24 notice or acquire the membership interests by paying the fair value of the
25 membership interests to the dissenting member within 180 days after receipt of the

ASSEMBLY BILL 1186**SECTION 78**

1 notice. Upon acquiring the membership interests, the cooperative may hold the
2 interests to be reissued or may retire and cancel the interests.

3 **193.605 Cooperative securities. (1) APPLICABILITY OF CH. 408 TO COOPERATIVE**
4 **SECURITIES.** To the extent that the provisions of this chapter concerning the
5 authorization, issuance, control, use, and rights of membership interests or
6 concerning the stock of a cooperative are inconsistent with ch. 408, the provisions of
7 this chapter apply.

8 **(2) LIABILITY OF COOPERATIVE FOR WRONGFUL TRANSFERS OF ITS SECURITIES.** (a) In
9 this subsection:

10 1. “Proper person” means the registered owner or last prior transferee, whether
11 or not described as fiduciary for another, or his or her authorized agent or legal
12 representative or the successor to his or her interest by operation of law.

13 2. “Transfer” includes a redemption or recall of stock.

14 3. “Wrongful transfer” means a transfer which is in excess of the authorization
15 or capacity of the transferor, or which is made in breach of the transferor’s fiduciary
16 duty.

17 (b) A cooperative may not be held liable for acting upon wrongful transfers of
18 its securities which are not “securities” as defined in s. 408.102, unless it has notice
19 that the certificate was not transferred by a proper person or has notice that the
20 transfer was a wrongful transfer.

21 **(3) MISSING SECURITIES OR RECORDS.** (a) When a security issued by a cooperative,
22 which is not a “security” as defined in s. 408.102, is missing, the cooperative shall
23 issue a duplicate security if the owner so requests and furnishes an indemnity
24 acceptable to the cooperative.

ASSEMBLY BILL 1186

1 (b) When records showing ownership of securities or apportionment of equity
2 or membership interests are missing and the information therein contained is
3 necessary to a proposed redemption of the interest, the cooperative may give notice
4 and redeem by satisfying all of the following:

5 1. The cooperative shall set aside an amount equal to the value of the interests
6 to be redeemed.

7 2. The cooperative shall give notice of such redemption to all owners of interests
8 of which the cooperative has knowledge.

9 3. If there are interests, the ownership of which is unknown to the cooperative,
10 it shall publish notice of the redemption at least once a month for 4 months in a
11 publication circulated among members of cooperatives in the area, and also publish
12 a class 3 notice, under ch. 985.

13 **193.611 Assignment of financial rights.** (1) ASSIGNMENT OF FINANCIAL
14 RIGHTS PERMITTED. Except as provided in sub. (3), a member's financial rights in a
15 cooperative are transferable in whole or in part.

16 (2) EFFECT OF ASSIGNMENT OF FINANCIAL RIGHTS. An assignment of a member's
17 financial rights under sub. (1) entitles the assignee to receive, to the extent assigned,
18 only the share of profits and losses and the distributions to which the assignor would
19 otherwise be entitled. An assignment of a member's financial rights under sub. (1)
20 does not dissolve the cooperative and does not entitle or empower the assignee to
21 become a member, to exercise any governance rights, to receive any notices from the
22 cooperative, or to cause dissolution. The assignment may not allow the assignee to
23 control the member's exercise of governance or voting rights.

24 (3) RESTRICTIONS ON ASSIGNMENT OF FINANCIAL RIGHTS. (a) A restriction on the
25 assignment of financial rights in a cooperative may be imposed in the articles, in the

ASSEMBLY BILL 1186**SECTION 78**

1 bylaws, in a member control agreement, by a resolution adopted by the members at
2 a members' meeting, or by an agreement among members and the cooperative. A
3 restriction is not binding with respect to financial rights reflected in the required
4 records of the cooperative before the adoption of the restriction, unless the owners
5 of those financial rights are parties to the agreement or voted in favor of the
6 restriction.

7 (b) Subject to par. (c), a restriction under par. (a) is enforceable only if the
8 restriction is not manifestly unreasonable under the circumstances and is noted
9 conspicuously in the required records of the cooperative. Such a restriction may be
10 enforced against the owner of the restricted financial rights or a successor or
11 transferee of the owner, including a pledgee or a legal representative.

12 (c) A restriction on an assignment of financial rights under par. (a) which is
13 otherwise valid and in effect at the time of the issuance of a statement of membership
14 interest issued by the cooperative under s. 193.615 but which is not reflected in that
15 statement is ineffective against an assignee who takes an assignment in reliance on
16 the statement.

17 (d) A security interest in a member's financial rights may be foreclosed and
18 otherwise enforced, and a secured party may assign a member's financial rights in
19 accordance with ch. 408, without the consent or approval of the member whose
20 financial rights are subject to the security interest.

21 **193.615 Nature and terms of a membership interest and statement of**
22 **interest owned. (1) GENERALLY.** A membership interest is personal property. A
23 membership interest does not give the owner of the interest any interest in specific
24 cooperative property. All property of the cooperative is property of the cooperative
25 itself.

ASSEMBLY BILL 1186

1 **(2) STATEMENT OF MEMBERSHIP INTEREST.** At the request of any member, the
2 cooperative shall state in writing the particular membership interest owned by that
3 member as of the date the cooperative makes the statement. The statement shall
4 describe the member's rights to vote, if any, and to share in profits, losses, and
5 distributions, restrictions on assignments of the member's financial rights under s.
6 193.611 (3) or voting rights under s. 193.555, and any assignment of the member's
7 rights then in effect other than a security interest.

8 **(3) TERMS OF MEMBERSHIP INTERESTS GENERALLY.** (a) All the membership
9 interests of a cooperative shall satisfy all of the following:

10 1. Unless the articles or bylaws provide otherwise, the membership interests
11 shall be of one class, without series.

12 2. The membership interests shall be patron membership interests and, if
13 authorized, nonpatron membership interests subject to this chapter entitled to vote
14 as provided in s. 193.555, and have equal rights and preferences in all matters not
15 otherwise provided for by the board unless and to the extent that the articles or
16 bylaws have fixed the relative rights and preferences of different classes and series.

17 (b) All of the following apply to the rights and preferences of a class or series
18 of membership interests:

19 1. The rights and preferences may be made dependent upon facts ascertainable
20 outside the articles or bylaws, or outside the resolution or resolutions under sub. (5)
21 establishing the class or series, if the manner in which the facts operate upon the
22 rights and preferences is clearly and expressly set forth in the articles or bylaws or
23 in the resolution or resolutions establishing the class or series.

24 2. The rights and preferences may include by reference some or all of the terms
25 of any agreements, contracts, or other arrangements entered into by the cooperative

ASSEMBLY BILL 1186**SECTION 78**

1 in connection with the establishment of the class or series if the cooperative retains
2 at its principal office a copy of the agreements, contracts, or other arrangements or
3 the portions thereof included by reference.

4 (c) If specified in the articles or bylaws, or the resolution under sub. (5)
5 establishing the class or series, all of the following apply to membership interests of
6 a class or series:

7 1. The membership interests are subject to the right of the cooperative to
8 redeem any of those membership interests at a price fixed in the articles or bylaws
9 or by the board.

10 2. Owners of the membership interests may receive cumulative, partially
11 cumulative, or noncumulative distributions.

12 3. The membership interests may have preference over any other class or series
13 of membership interests for the payment of distributions.

14 4. The membership interests may be convertible into membership interests of
15 any other class or series.

16 5. The membership interests may have full, partial, or no voting rights, except
17 as provided in s. 193.555.

18 **(4) RIGHTS OF JUDGMENT CREDITOR.** On application to the circuit court by any
19 judgment creditor of a member, the court may order the payment of the unsatisfied
20 amount of the judgment from a member's or an assignee's financial rights. Such a
21 judgment creditor has only the rights of an assignee of a member's financial rights
22 under s. 193.611. This subsection is the sole and exclusive remedy of a judgment
23 creditor with respect to the judgment debtor's membership interest. This subsection
24 does not deprive any member or assignee of financial rights of the benefit of any
25 exemption under s. 815.18 applicable to the membership interest.

ASSEMBLY BILL 1186

1 **(5) BOARD AUTHORITY TO FIX TERMS.** (a) If permitted under the bylaws, the board
2 may adopt a resolution establishing a class or series of membership interests, setting
3 forth the designation of the class or series, and fixing the relative rights and
4 preferences of the class or series, consistent with this chapter. A resolution under
5 this paragraph takes effect on the 3rd day after the date on which the statement
6 required under par. (b) is given to the members, as determined by the board.

7 (b) The cooperative may not accept contributions for any membership interests
8 established by resolution under par. (a) until the board gives the members a
9 statement setting forth the name of the cooperative, the text of the resolution, and
10 the date on which the resolution was adopted.

11 **(7) SECURITY INTEREST IN COOPERATIVE SECURITIES.** For the purpose of any law
12 relating to security interests, a membership interest, governance or voting rights,
13 and financial rights are each to be characterized as provided in s. 408.103 (3).

14 **(8) POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER AND OTHER**
15 **FIDUCIARIES.** (a) Except as provided in par. (b), if a member who is an individual dies
16 or a court adjudges the member to be incompetent to manage his or her person or
17 property, or an order for relief under a judgment of bankruptcy is entered with
18 respect to the member, the member's executor, administrator, guardian, conservator,
19 trustee, or other legal representative may exercise all of the rights applicable to the
20 member's membership interest for the purpose of settling the estate or
21 administering the member's property. Except as provided in par. (b), if a member is
22 not an individual and is dissolved, terminated, or placed by a court in receivership
23 or bankruptcy, the member's legal representative or successor may exercise all of the
24 rights applicable to the member's membership interest.

ASSEMBLY BILL 1186**SECTION 78**

1 (b) Subject to the articles and bylaws, if an event described in par. (a) causes
2 the termination of a member's membership interest and the termination does not
3 result in dissolution of the cooperative, the terminated member's interest is
4 considered to be that of an assignee of financial rights under s. 193.611 and the rights
5 to be exercised by the executor, administrator, guardian, conservator, trustee, legal
6 representative, or successor are limited accordingly.

7 **(9) LIABILITY OF SUBSCRIBERS AND MEMBERS WITH RESPECT TO MEMBERSHIP**
8 **INTERESTS.** A subscriber for membership interests or a member of a cooperative is
9 under no obligation to the cooperative or its creditors with respect to the membership
10 interests subscribed for or owned, except to pay to the cooperative the full
11 consideration for which the membership interests are issued or to be issued.

12 **193.621 Certificated membership interests. (1) CERTIFICATED INTERESTS**
13 **AUTHORIZED.** A membership interest of a cooperative may be certificated. The
14 cooperative shall provide each holder of a certificated membership interest with a
15 certificate of membership interest under sub. (2).

16 **(2) REQUIREMENTS OF CERTIFICATE; GENERALLY.** (a) A certificate of membership
17 interest shall be signed by an agent or officer authorized in the articles or bylaws to
18 sign the certificate or, in the absence of such an authorization, by the chairperson of
19 the board or the records officer of the cooperative. If the person who signs the
20 certificate subsequently ceases to have the capacity to sign the certificate before the
21 certificate is issued, the cooperative may issue the certificate with the same effect as
22 if the person had that capacity on the date of its issue.

23 (b) A certificate of membership interest shall contain all of the following
24 information on the certificate's face:

- 25 1. The name of the cooperative.

ASSEMBLY BILL 1186

1 2. A statement that the cooperative is organized under the laws of this state
2 and this chapter.

3 3. The name of the person to whom the certificate is issued.

4 4. The number and class of membership interests, and the designation of the
5 series, if any, that the certificate represents.

6 5. A statement that membership interests are subject to the articles and
7 bylaws.

8 6. Any restrictions on transfer of the membership interests that the certificate
9 represents, including any requirement for the approval of the board and first rights
10 to purchase by the cooperative. Notwithstanding any other provision of this
11 subsection, the information required under this subdivision may be stated by
12 reference to the back of the certificate or to another document.

13 **(3) REQUIREMENTS OF CERTIFICATE; MULTIPLE SERIES OR CLASSES.** A certificate of
14 membership interest representing a membership interest issued by a cooperative
15 that is authorized to issue membership interests of more than one class or series shall
16 set forth upon the face or back of the certificate, or shall state that the cooperative
17 will furnish to any member upon request and without charge, a full statement of the
18 designations, preferences, limitations, and relative rights of the membership
19 interests of each class or series authorized to be issued, so far as they have been
20 determined, and the authority of the board to determine the relative rights and
21 preferences of subsequent classes or series.

22 **(4) PRIMA FACIE EVIDENCE.** A certificate of membership interest issued under
23 this section is prima facie evidence of the ownership of the membership interest that
24 the certificate represents.

ASSEMBLY BILL 1186**SECTION 78**

1 **(5) UNCERTIFICATED MEMBERSHIP INTERESTS AUTHORIZED.** Unless uncertificated
2 membership interests are prohibited by the articles or bylaws, the board may adopt
3 a resolution permitting uncertificated membership interests. Such a resolution does
4 not apply to a membership interest represented by a certificate until the certificate
5 is surrendered to the cooperative. Within a reasonable time after the issuance or
6 transfer of an uncertificated membership interest, the cooperative shall send to the
7 new member a statement containing the information required under sub. (2) (b) and
8 (3) to be stated on certificates, unless the cooperative is publicly held and has adopted
9 a system of issuance, recordation, and transfer of its membership interests by
10 electronic or other means not involving an issuance of certificates, in compliance
11 with section 17A of the Securities Exchange Act of 1934.

12 **(6) COMPARABLE RIGHTS.** Except as otherwise provided under this chapter, the
13 rights and obligations of holders of certificated membership interests are identical
14 to the rights and obligations of holders of uncertificated membership interests of the
15 same class and series.

16 **193.625 Replacement certificates. (1) ISSUANCE.** A cooperative may issue
17 a replacement certificate of membership interest under s. 193.621 using the
18 procedure specified in s. 408.405 (1), if the owner of the membership interest
19 represented in a certificate claims that the certificate has been lost, destroyed or
20 wrongfully taken.

21 **(2) NOT AN OVERISSUE.** The issuance of a replacement certificate under sub. (1)
22 is not an overissue of the membership interest it represents.

23 **193.631 Restriction on transfer or registration of membership**
24 **interests. (1) HOW IMPOSED.** A restriction on the transfer, including registration,
25 of a membership interest may be imposed in the articles, in the bylaws, in a member

ASSEMBLY BILL 1186

1 control agreement, by a resolution adopted by the members, or by an agreement
2 among or other written action by members or among them and the cooperative. A
3 restriction imposed by a member control agreement or other written action of
4 members is effective only against the parties to the agreement or written action or
5 the members who assent pursuant to a member resolution. A restriction is not
6 binding with respect to membership interests issued prior to the adoption of the
7 restriction, unless the holders of those membership interests are parties to the
8 agreement or voted in favor of the restriction.

9 (2) RESTRICTIONS PERMITTED. (a) A restriction under sub. (1) is enforceable only
10 if the restriction is not manifestly unreasonable under the circumstances and any of
11 the following apply:

12 1. The restriction is noted conspicuously on a certificate of membership interest
13 representing the membership interest or the existence of the restriction is noted on
14 the certificate and reference is made to a separate document creating or describing
15 the restriction.

16 2. The restriction is imposed under this chapter or is included in the articles
17 or bylaws.

18 3. The restriction relates to an uncertificated membership interest and is
19 included in information sent to the holders of such a membership interest.

20 (b) A restriction that is enforceable under par. (a) may be enforced against the
21 holder of the restricted membership interest or a successor or transferee of the
22 holder, including a pledgee or a legal representative.

SUBCHAPTER VII**CONTRIBUTIONS, ALLOCATIONS,****AND DISTRIBUTIONS**

ASSEMBLY BILL 1186**SECTION 78**

1 **193.701 Authorization, form, and acceptance.** (1) BOARD MAY AUTHORIZE.

2 If authorized by the board, a cooperative may accept contributions, make
3 contribution agreements under s. 193.711, and make contribution rights agreements
4 under s. 193.715.

5 (2) PERMISSIBLE FORMS. A person may make a contribution to a cooperative by
6 any of the following means:

7 (a) By paying money or transferring the ownership of an interest in property
8 to the cooperative, or performing services to or for the benefit of the cooperative.

9 (b) Through a written obligation that is signed by the person and requires the
10 person to pay money or transfer ownership of an interest in property to the
11 cooperative or to perform services to or for the benefit of the cooperative.

12 (3) ACCEPTANCE OF CONTRIBUTIONS. No purported contribution is to be treated
13 as or considered to be a contribution, unless all of the following apply:

14 (a) The board accepts the contribution on behalf of the cooperative and in that
15 acceptance describes the contribution, including terms of future performance, if any,
16 and states the value being accorded to the contribution.

17 (b) The acceptance of the contribution and the contribution's accorded value are
18 both reflected in the required records of the cooperative.

19 **193.702 Valuation; presumption and liability.** The determinations of the
20 board as to a contribution's accorded value under s. 193.701 (3) (a) and the fairness
21 to the cooperative of a contribution and any terms of payment or performance
22 applicable to the contribution, the terms of any contribution agreement under s.
23 193.711, and the terms of any contribution rights agreement under s. 193.715 are
24 presumed to be proper if the determinations are made in good faith and on the basis
25 of methods that are reasonable under the circumstances. Directors who are present

ASSEMBLY BILL 1186

1 and entitled to vote, and who, intentionally or without reasonable investigation, fail
2 to vote against approving a consideration that is unfair to the cooperative, or who
3 overvalue property or services received or to be received by the cooperative as a
4 contribution, are jointly and severally liable to the cooperative for the benefit of the
5 members then existing who did not consent to and are damaged by the consideration
6 or overvaluing of property or services, to the extent of the damages to those members.
7 A director against whom a claim is asserted pursuant to this section, except in a case
8 of knowing participation in a deliberate fraud, is entitled to contribution on an
9 equitable basis from other directors who are liable under this section.

10 **193.705 Restated value of previous contributions. (1) DEFINITION.** In this
11 section, "old contributions" means all contributions reflected in the required records
12 of a cooperative immediately before the time the cooperative accepts a new
13 contribution.

14 **(2) RESTATEMENT REQUIRED.** If a cooperative accepts a new contribution, the
15 board shall restate the value of all old contributions.

16 **(3) RESTATEMENT METHOD FOR SAME SERIES OR CLASS. (a)** Unless otherwise
17 provided in the articles or bylaws, the board shall restate the value of old
18 contributions of the same series or class of the new contribution by following all of
19 the following steps in numerical order:

- 20 1. State the value accorded to the new contribution under s. 193.701 (3) (a).
- 21 2. Determine what the total value will be, after the restatement under this
22 subsection, of all contributions of same series or class as the new contribution.
- 23 3. Subtract the value stated under subd. 1. from the value determined under
24 subd. 2., yielding the total value, after the restatement under this subsection, of all
25 the old contributions of the particular series or class.

ASSEMBLY BILL 1186**SECTION 78**

1 4. Subtract the value, as reflected in the required records before the
2 restatement under this subsection, of the old contributions from the value
3 determined under subd. 3., yielding the value to be allocated among and added to the
4 old contributions of the particular series or class.

5 5. Allocate the value determined under subd. 4. proportionally among the old
6 contributions of the particular series or class, add the allocated values to the values
7 of those old contributions, and change the required records accordingly.

8 (b) The values determined under par. (a) 4. and allocated and added under par.
9 (a) 5. may be positive, negative, or zero.

10 **(4) RESTATEMENT METHOD FOR DIFFERENT SERIES OR CLASS.** Unless otherwise
11 provided in the articles or bylaws, the board shall restate the value of old
12 contributions of a series or class different from that of the new contribution by
13 following all of the following steps in alphanumerical order:

14 (a) Determine the percentage by which any restatement under sub. (3) has
15 changed the total contribution value reflected in the required records for the series
16 or class of the new contribution.

17 (b) As to each old contribution of a different series or class, change the value
18 reflected in the required records by the percentage determined under par. (a). The
19 percentage determined under par. (a) may be positive, negative, or zero.

20 **(5) AGGREGATING NEW CONTRIBUTIONS.** If a cooperative accepts more than one
21 new contribution of the same series or class at the same time, then for the purpose
22 of the restatement required by this section the board may consider all such new
23 contributions as if they were a single contribution.

24 **193.711 Contribution agreements. (1g) CONTRIBUTION AGREEMENTS**
25 PERMITTED. Pursuant to s. 193.701 (1), a cooperative and a member or potential

ASSEMBLY BILL 1186

1 member may enter into an agreement requiring the member or potential member to
2 contribute goods, services, or money to the cooperative as a condition of membership
3 or receipt of a membership interest.

4 **(1r)** SIGNED WRITING REQUIRED. A contribution agreement shall be in writing
5 and signed by each person required to make a contribution under the agreement.

6 **(2)** AGREEMENT IRREVOCABLE FOR DEFINITE PERIOD; EXCEPTIONS. A contribution
7 agreement is irrevocable for a period of 6 months, unless otherwise provided in the
8 contribution agreement or unless each person required to make a contribution under
9 the agreement and, if in existence, the cooperative, consents to a different period of
10 irrevocability.

11 **(3)** TIME OF PERFORMANCE UNDER AGREEMENT. Unless the contribution
12 agreement provides otherwise, all payments or other actions required under the
13 agreement shall be made or taken at the time or times determined by the board,
14 except that a call made by the board for a person to make a payment or perform an
15 action required under the agreement shall be uniform for all membership interests
16 of the same class or series.

17 **(4)** FAILURE TO PERFORM; REMEDIES. (a) Unless the contribution agreement
18 provides otherwise, if a person fails to make a payment required under the
19 contribution agreement, the cooperative may bring an action for breach of contract,
20 sell any membership interests that are subject to the contribution agreement
21 pursuant to par. (b) and bring an action to collect any deficiency, or cancel the
22 contribution agreement pursuant to par. (c). If a person fails to make a required
23 contribution of property or services, the person shall pay to the cooperative an
24 amount equal to that portion of the value of the contribution that has not been made,
25 as stated in the cooperative's required records.

ASSEMBLY BILL 1186**SECTION 78**

1 (b) To the extent provided in par. (a), the cooperative may cancel the
2 membership interests of any person who defaults on a contribution agreement and
3 sell any membership interests that are subject to a contribution agreement if the
4 amount due under the contribution agreement relating to those membership
5 interests remains unpaid for a period of 20 days after the cooperative gives written
6 notice of demand for payment to the person required to make the payment. The total
7 offering price of the membership interests in such a sale shall be at least the amount
8 of the balance owed by the person, plus the expenses incidental to the sale. If
9 membership interests are sold pursuant to this paragraph, the cooperative shall pay
10 to the person, or that person's legal representative, the lesser of the following:

11 1. The amount by which the proceeds of the sale, less the expenses incident to
12 the sale and any additional amounts the person is required to pay under the terms
13 of the contribution agreement as a result of the default, exceeds the amount of the
14 payment the person failed to make.

15 2. The total amount paid by the person under the contribution agreement.

16 (c) To the extent provided in par. (a), the cooperative may cancel a contribution
17 agreement if the amount due under the contribution agreement remains unpaid for
18 a period of 20 days after the cooperative gives written notice of demand for payment
19 to the person required to make the payment. Unless the contribution agreement
20 provides otherwise, if the cooperative cancels a contribution agreement pursuant to
21 this paragraph, the cooperative may retain any payments made as provided in the
22 contribution agreement.

23 **(5) RESTRICTIONS ON ASSIGNMENT.** Unless the articles or bylaws provide
24 otherwise, a person may not assign, in whole or in part, that person's rights under

ASSEMBLY BILL 1186

1 a contribution agreement to a person who is not a member at the time of the
2 assignment, unless all the members consent to the assignment in writing.

3 **193.715 Contribution rights agreements. (1) CONTRIBUTION RIGHTS**
4 **AGREEMENTS PERMITTED.** Pursuant to s. 193.701 (1) and subject to any restrictions in
5 the articles or bylaws, a cooperative may enter into an agreement that provides a
6 person rights to contribute goods, services, or money to the cooperative.

7 **(2) WRITING REQUIRED; TERMS INCLUDED BY REFERENCE.** A contribution rights
8 agreement shall be in writing. Terms of the agreement may be included by reference.

9 **(3) RESTRICTIONS ON ASSIGNMENT.** Unless the articles or bylaws provide
10 otherwise, a person may not assign, in whole or in part, that person's rights under
11 a contribution rights agreement to a person who is not a member at the time of the
12 assignment, unless all the members consent to the assignment in writing.

13 **193.721 Allocations of profits and distributions of cash and other**
14 **assets. (1) ALLOCATION OF PROFITS AND LOSSES.** Except as otherwise provided in this
15 subsection and the articles or bylaws, profits and losses shall be allocated between
16 patron membership interests collectively and nonpatron membership interests
17 collectively on the basis of the value of contributions received from patron
18 membership interests collectively and nonpatron membership interests collectively.
19 The allocation of profits to patron membership interests collectively in a fiscal year
20 may not be less than 51 percent of the total profits for that fiscal year, except that the
21 allocation of profits to patron membership interests collectively in a fiscal year may
22 not be less than 30 percent of the total profits for that fiscal year if any of the following
23 apply:

ASSEMBLY BILL 1186**SECTION 78**

1 (a) The articles were amended to provide for the reduced percentage and,
2 notwithstanding s. 193.221 (1) and (3), the amendment was approved by the
3 affirmative vote of the patron members.

4 (b) The bylaws provide for the reduced percentage and were approved by an
5 affirmative vote of the patron members.

6 (c) The bylaws were amended to provide for the reduced percentage and the
7 amendment was approved by the affirmative vote of the patron members.

8 **(2) DISTRIBUTION OF CASH OR OTHER ASSETS.** If not stated in the articles, the
9 bylaws shall prescribe the distribution of cash or other assets of the cooperative
10 among the membership interests of the cooperative. Unless the articles or bylaws
11 provide otherwise, the cooperative shall distribute cash or other assets to patron
12 membership interests collectively and nonpatron membership interests collectively
13 on the basis of the value of contributions received by the cooperative from patron
14 membership interests collectively and nonpatron membership interests collectively.
15 The distributions to patron membership interests collectively in any fiscal year may
16 not be less than 51 percent of the total distributions for that fiscal year, except that
17 distributions to patron membership interests collectively in a fiscal year may not be
18 less than 30 percent of the total distributions for that fiscal year if any of the following
19 apply:

20 (a) The articles provide for the reduced percentage and that provision was not
21 included in the articles via amendment under s. 193.221 (3).

22 (b) The bylaws provide for the reduced percentage and were adopted by an
23 affirmative vote of the members.

24 (c) The bylaws were amended to provide for the reduced percentage and the
25 amendment was adopted by the affirmative vote of the members.

ASSEMBLY BILL 1186**1 193.725 Allocations and distributions of profits to patron members. (1)**

2 CAPITAL RESERVES. A cooperative may set aside any portion of profits allocated to the
3 patron membership interests that the board determines is advisable for the purpose
4 of creating or maintaining a capital reserve.

5 **(2) OTHER RESERVES.** The board may do any of the following with regard to
6 profits allocated to the patron membership interests:

7 (a) Set aside an amount not to exceed 5 percent of the annual profits of the
8 cooperative for promoting and encouraging cooperative organization.

9 (b) Establish and accumulate reserves for new buildings, machinery and
10 equipment, depreciation, losses, and other proper purposes.

11 **(3) PATRONAGE DISTRIBUTIONS.** Profits allocated to patron members in excess of
12 dividends on equity and additions to reserves shall be allocated and distributed to
13 patron members on the basis of patronage and, if the bylaws provide, to nonmember
14 patrons as so provided. A cooperative may establish allocation units and pooling
15 arrangements and may account for and distribute profits to patrons on the basis of
16 allocation units and pooling arrangements. A cooperative may offset the losses of an
17 allocation unit or pooling arrangement against the profits of other allocation units
18 or pooling arrangements.

19 **(4) FREQUENCY OF DISTRIBUTION.** A cooperative shall make distributions under
20 sub. (3) at least annually.

21 **(5) FORM OF DISTRIBUTION.** A cooperative may make distributions under sub. (3)
22 in the form of cash, capital credits, allocated patronage equities, revolving fund
23 certificates, or its own or other securities.

24 **(7) PATRONAGE CREDITS FOR INELIGIBLE MEMBERS.** If a nonmember patron with
25 patronage credits is not qualified or eligible for membership, the cooperative may

ASSEMBLY BILL 1186**SECTION 78**

1 credit to the nonmember patron's account a refund due to the nonmember patron.
2 The board may issue a certificate of interest to reflect any such credit and, after the
3 board issues such a certificate, the patron may receive distributions of profits in the
4 same manner as a patron member.

5 **193.731 Member control agreements. (1) AUTHORIZATION AND EXECUTION.**
6 Except as otherwise provided in this subsection, any person who has entered into a
7 contribution agreement under s. 193.711 or an agreement to purchase cooperative
8 securities, or any member, may enter into a written agreement with the cooperative
9 that relates to the control of or the liquidation, dissolution, or termination of the
10 cooperative, or any phase of the business and affairs of the cooperative. Such an
11 agreement may not take effect unless signed by all persons who are then members
12 and all persons who have entered into contribution agreements. An agreement
13 under this subsection may not relate to patron member voting control under s.
14 193.545 or patron member allocation and distribution provisions under s. 193.721.

15 **(2) SAME EFFECT AS ARTICLES AND BYLAWS.** Wherever this chapter provides that
16 a particular result may or shall be obtained through a provision in the articles or
17 bylaws, the same result may be accomplished through a provision in an agreement
18 under sub. (1) or a procedure established in such an agreement.

19 **(3) OTHER AGREEMENTS NOT AFFECTED.** This section does not limit the authority
20 of persons to enter into agreements otherwise valid, nor is the procedure set forth in
21 this section the exclusive method of agreement among members or between the
22 members and the cooperative with respect to any of the matters described.

23 **193.735 Distribution of unclaimed property. (1) ALTERNATE PROCEDURE TO**
24 **DISTRIBUTE PROPERTY.** Notwithstanding s. 177.17 (4) (a) 2. and (b), a cooperative may
25 distribute any property required to be reported under s. 177.17 (1) to an entity that

ASSEMBLY BILL 1186

1 is exempt from taxation under section 501 (a) of the Internal Revenue Code. A
2 cooperative making a distribution under this subsection shall file all of the following
3 with the state treasurer before making the distribution:

4 (a) A verified written description and explanation of the distribution.

5 (c) The name, address, and exemption number of the entity to which the
6 property is to be distributed.

7 (d) The approximate date of the distribution.

8 **(2) REPORTING PROCEDURE NOT AFFECTED.** Subsection (1) does not affect the
9 requirement that a cooperative report property under s. 177.17 (1).

10 **(3) OWNER'S RIGHT EXTINGUISHED ON DISBURSEMENT.** The articles or bylaws may
11 provide that a distribution under sub. (1) extinguishes all rights of the owner in and
12 to the distributed property.

SUBCHAPTER VIII

MERGER AND CONSOLIDATION

15 **193.801 Merger and consolidation.** (1) **AUTHORIZATION.** Unless otherwise
16 prohibited and except as otherwise provided in this subsection, a cooperative may
17 merge or consolidate with a business entity by complying with this section and the
18 applicable law of the jurisdiction under whose laws the surviving business entity will
19 be organized. A cooperative may not merge or consolidate with a business entity
20 organized under the laws of this state, other than an association, unless the law
21 governing the business entity specifically authorizes merger or consolidation with
22 a cooperative.

23 **(2) PLAN.** To initiate a merger or consolidation, the board shall prepare a
24 written plan stating all of the following:

ASSEMBLY BILL 1186**SECTION 78**

1 (a) The name of the cooperative and each business entity that is party to the
2 merger or consolidation.

3 (b) The name of the business entity that will survive the merger or
4 consolidation.

5 (c) The manner and basis of converting membership or ownership interests in
6 the cooperative and each business entity that is party to the merger or consolidation
7 into membership or ownership interests in the surviving business entity, money, or
8 other property.

9 (d) The terms of the merger or consolidation.

10 (e) The proposed effect of the merger or consolidation on the members of each
11 association that is party to the merger or consolidation.

12 (f) For a consolidation, the contents of the articles or other organizational
13 documents of the surviving business entity which will be filed with the jurisdiction
14 in which the surviving business entity is organized.

15 **(3) NOTICE.** (a) The board shall give notice of the merger or consolidation to
16 each member. The notice shall contain all of the following:

- 17 1. The full text of the plan under sub. (2).
- 18 2. The time and place of the meeting at which the plan will be considered.

19 (b) A cooperative with more than 200 members may provide the notice in the
20 same manner as notice of a regular members' meeting.

21 **(4) ADOPTION OF PLAN; ARTICLES OF MERGER OR CONSOLIDATION.** (a) If a quorum
22 of the members eligible to vote is registered as being present or represented by
23 alternative vote at the meeting specified in the notice under sub. (3), the plan of
24 merger or consolidation may be adopted by the following means, as applicable:

- 25 1. By a majority of the votes cast.

ASSEMBLY BILL 1186

1 2. For a cooperative with articles or bylaws requiring more than majority
2 approval or other conditions for approval, by a sufficient vote as required under the
3 articles or bylaws or by satisfying the other conditions for approval.

4 (b) If a plan is adopted under par. (a), the chairperson, vice-chairperson,
5 records officer, or documents officer of each association that is party to the merger
6 or consolidation shall execute articles of merger or consolidation which state the plan
7 and the fact that the plan was adopted. The business entity surviving the merger
8 or consolidation shall file the articles of merger with the department. If the business
9 entity surviving the merger or consolidation is organized under the laws of this state,
10 the department shall issue a certificate of organization to the business entity.

11 **193.805 Merger of subsidiary or parent. (1) WHEN AUTHORIZED; PLAN OF**
12 **MERGER.** (a) Except as otherwise provided in this paragraph, a parent cooperative
13 that owns at least 90 percent of the outstanding ownership interests of each class and
14 series of a subsidiary business entity, other than ownership interests that, absent
15 this section, would not be entitled to vote on a merger, may merge the subsidiary into
16 the parent or the parent into the subsidiary without a vote of the members of the
17 parent or the members of the subsidiary by complying with this section and the
18 applicable law of the jurisdiction under whose laws the business entity surviving the
19 merger will be organized. Except as otherwise provided in this paragraph, a parent
20 cooperative that owns at least 90 percent of the outstanding ownership interests of
21 each class and series of 2 or more subsidiary business entities, other than ownership
22 interests that, absent this section, would not be entitled to vote on a merger, may
23 merge the subsidiaries into one another without a vote of the members of the parent
24 or the members of the subsidiaries by complying with this section and the applicable
25 law of the jurisdiction under whose laws the business entity surviving the merger

ASSEMBLY BILL 1186**SECTION 78**

1 will be organized. This paragraph does not permit a cooperative to merge with a
2 business entity organized under the laws of this state, other than an association,
3 unless the law governing the business entity specifically authorizes merger with a
4 cooperative.

5 (b) To initiate a merger under par. (a), the board shall prepare a written plan
6 stating all of the following:

7 1. The name of each subsidiary that is party to the merger, the name of the
8 parent, and the name of the business entity surviving the merger.

9 2. Except as provided in subd. 3., the manner and basis of converting
10 membership or ownership interests in the parent and each subsidiary that is party
11 to the merger, as applicable, into membership or ownership interests in the surviving
12 business entity, money, or other property.

13 3. If the parent is party to the merger but is not the surviving business entity
14 and if the surviving business entity is a cooperative, a provision for the pro rata
15 issuance of membership interests of the surviving business entity to the holders of
16 membership interests in the parent on surrender of any certificates for shares of the
17 parent.

18 4. If the surviving business entity is a subsidiary cooperative, a statement of
19 any amendments to the articles of the surviving business entity that will be part of
20 the merger.

21 (c) If the parent is party to the merger but is not the surviving business entity,
22 the plan under par. (b) shall be approved by the affirmative vote of the holders of a
23 majority of the voting power of all membership interests of the parent entitled to vote
24 at a regular or special meeting.

ASSEMBLY BILL 1186

1 **(2) NOTICE.** No later than 10 days after the effective date of the merger, the
2 board of the parent shall give notice of the merger, including a copy of the plan of
3 merger, to each member of each subsidiary that is party to the merger.

4 **(3) ARTICLES OF MERGER.** The board of the parent shall file with the department
5 articles of merger, signed by the chairperson or his or her designee, containing all of
6 the following:

7 (a) The plan of merger.

8 (b) The number of outstanding membership interests of each class and series
9 of each subsidiary that is party to the merger, other than the classes or series that,
10 absent this section, would not be entitled to vote on a merger, and the number of such
11 membership interests owned by the parent.

12 (c) A statement that the plan of merger has been approved by the parent under
13 this section.

14 **(5) CERTIFICATE.** If the business entity surviving the merger is organized under
15 the laws of this state, the department shall issue a certificate of organization to the
16 business entity upon receipt of the articles of merger.

17 **(6) RIGHTS OF DISSENTING OWNERS.** If, immediately prior to a merger under this
18 section, a business entity that is party to the merger is owned, at least in part, by
19 persons other than the parent or an affiliate of the parent, those persons have
20 dissenters' rights under the law governing that business entity's organization.

21 **(7) NONEXCLUSIVITY.** Mergers authorized under sub. (1) (a) may instead be
22 accomplished under s. 193.801, in which case this section does not apply.

23 **193.807 Effective date; effect of merger or consolidation. (1) EFFECTIVE**
24 **DATE.** Unless a later date is provided in the plan of merger or consolidation or is

ASSEMBLY BILL 1186**SECTION 78**

1 required under other applicable law, a merger or consolidation is effective when the
2 articles of merger or consolidation are filed with the department.

3 (2) EFFECT OF MERGER OR CONSOLIDATION. All of the following occur when a
4 merger or consolidation takes effect:

5 (a) All business entities that are party to the merger or consolidation become
6 the business entity surviving the merger or consolidation, as designated in the plan,
7 and the separate existence of every business entity that is party to the merger or
8 consolidation, except the business entity surviving the merger or consolidation,
9 ceases.

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

13 (c) If, under the laws applicable to a business entity that is a party to the merger
14 or consolidation, one or more of the owners thereof is liable for the debts and
15 obligations of such business entity, such owner or owners shall continue to be liable
16 for the debts and obligations of the business entity, but only for such debts and
17 obligations accrued during the period or periods in which such laws are applicable
18 to such owner or owners. This paragraph does not affect liability under any taxation
19 laws.

20 (d) If, under the laws applicable to the surviving business entity, one or more
21 of the owners thereof is liable for the debts and obligations of such business entity,
22 the owner or owners of a business entity that is party to the merger, other than the
23 surviving business entity, who become subject to such laws shall be liable for the
24 debts and obligations of the surviving business entity to the extent provided in such
25 laws, but only for such debts and obligations accrued after the merger or

ASSEMBLY BILL 1186

1 consolidation. The owner or owners of the surviving business entity prior to the
2 merger shall continue to be liable for the debts and obligations of the surviving
3 business entity to the extent provided in par. (c). This paragraph does not affect
4 liability under any taxation laws.

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

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

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

14 (h) The interests of each business entity that is party to the merger that are to
15 be converted into shares, interests, obligations, or other securities of the surviving
16 business entity or any other business entity or into cash or other property are
17 converted, and the former holders of the interests are entitled only to the rights
18 provided in the articles of merger or consolidation to their dissenters' rights under
19 the laws applicable to each business entity that is party to the merger.

20 **193.835 Abandonment of merger. (1) AUTHORITY AND PROCEDURE.** A merger
21 may be abandoned before it takes effect by any of the following means:

22 (b) An abandonment may be approved at a meeting by the affirmative vote of
23 the holders of a majority of the voting power of the membership interests of each
24 cooperative that is party to the merger who are entitled to vote on the approval of the
25 plan of merger, except that the board of a cooperative that is party to the merger may

ASSEMBLY BILL 1186**SECTION 78**

1 approve the abandonment if no members of that cooperative are entitled to vote. In
2 addition to the other requirements of this paragraph, if a business entity other than
3 a cooperative is party to the merger, an abandonment may only be approved by
4 taking any actions to approve the abandonment that are required by the laws under
5 which the business entity is organized.

6 (c) An abandonment may be approved as provided in the plan of merger.

7 (d) An abandonment may be approved by adoption, by the board of any
8 cooperative that is party to the merger, of a resolution abandoning the merger,
9 subject to the contract rights of any other person under the plan of merger. If a
10 business entity other than a cooperative is party to the merger, an abandonment may
11 be approved by a resolution of the governing body of the business entity adopted
12 according to the laws under which the business entity is organized, subject to the
13 contract rights of any other person under the plan of merger.

14 (2) ARTICLES OF ABANDONMENT. The board or other governing body of any
15 business entity that approves an abandonment under sub. (1) shall file with the
16 department articles of abandonment that contain all of the following:

17 (a) The names of the business entities that were party to the proposed merger.

18 (b) The provisions under sub. (1) under which the proposed merger is
19 abandoned.

20 (c) If the proposed merger is abandoned under sub. (1) (d), the text of the
21 resolution approving the abandonment.

SUBCHAPTER IX**DISSOLUTION**

24 **193.905 Voluntary dissolution; winding up.** (1) NOTICE OF DISSOLUTION.

25 To initiate a voluntary dissolution the board shall file with the department a notice

ASSEMBLY BILL 1186

1 of intent to dissolve. The board may not file a notice under this subsection unless the
2 notice is approved by affirmative vote of the members.

3 **(1m) COLLECTION AND PAYMENT OF DEBTS.** After a notice is filed under sub. (1),
4 the board shall proceed as soon as possible to collect, or make provision for the
5 collection of, all unpaid subscriptions for shares and all other debts owing to the
6 cooperative and pay, or make provision for the payment of, all debts, obligations, and
7 liabilities of the cooperative according to the priority accorded to the debts,
8 obligation, and liabilities, by law.

9 **(2) TRANSFER OF ASSETS.** After a notice is filed under sub. (1), the board may
10 lease or dispose of all or substantially all of the property and assets of the cooperative
11 without a vote of the members.

12 **(3) DISTRIBUTION TO MEMBERS AND FORMER MEMBERS.** Any property of the
13 cooperative remaining after discharge of the cooperative's debts, obligations, and
14 liabilities may be distributed to the members and former members as provided in the
15 bylaws.

16 **(4) UNCLAIMED ASSETS.** (a) If the articles or bylaws so provide, assets
17 distributable in the course of the dissolution of a cooperative that remain unclaimed
18 as provided in this paragraph may be forfeited to the cooperative in the manner set
19 forth in s. 185.03 (10), except that the board, a committee designated by the board
20 to liquidate the cooperative's assets, or a court, trustee, or other person authorized
21 to liquidate the assets of the cooperative may declare the funds forfeited, give the
22 notice, determine the purpose or purposes, and dedicate the funds as provided under
23 s. 185.03 (10) and except that any of these persons may declare the funds forfeited
24 no earlier than 2 years and no later than 5 years after the funds are first made
25 available to their owners in the course of the liquidation of the cooperative.

ASSEMBLY BILL 1186**SECTION 78**

1 (b) Assets distributable in the course of the dissolution of a cooperative that are
2 not forfeited under par. (a) shall be reported and delivered to the state treasurer as
3 provided under ch. 177.

4 (5) ARTICLES OF DISSOLUTION. After payment of all debts, obligations, and
5 liabilities of the cooperative has been made or provided for as required under sub.
6 (1m) and the remaining property of the cooperative has been distributed as provided
7 under sub. (3) or otherwise disposed of under sub. (4), the board shall file with the
8 department articles of dissolution. The articles of dissolution shall state all of the
9 following, as applicable:

10 (a) That all debts, obligations, and liabilities of the cooperative have been paid
11 or adequate provisions have been made for their payment or time periods during
12 which claims may be made against the cooperative have expired and no other claims
13 are outstanding.

14 (b) That the remaining assets of the cooperative have been distributed to the
15 members, pursuant to a liquidation authorized by the members, or as provided under
16 sub. (4).

17 (c) That legal, administrative, or arbitration proceedings by or against the
18 cooperative are not pending or adequate provision has been made for the satisfaction
19 of a judgment, order, or decree that may be entered against the cooperative in such
20 a pending proceeding.

21 (6) EFFECTIVE DATE. A cooperative is dissolved upon the filing of the articles of
22 dissolution as required under sub. (5).

23 (7) CERTIFICATE. Upon accepting articles of dissolution for filing, the
24 department shall issue to the dissolved cooperative or its legal representative a
25 certificate of dissolution that contains all of the following:

ASSEMBLY BILL 1186

1 (a) The name of the dissolved cooperative.

2 (b) The date the articles of dissolution were filed with the department.

3 (c) A statement that the cooperative is dissolved.

4 **193.911 Revocation of dissolution proceedings. (1) AUTHORITY TO REVOKE.**

5 Dissolution proceedings under s. 193.905 may be revoked before the articles of
6 dissolution are filed with the department as required under s. 193.905 (5).

7 **(2) REVOCATION BY MEMBERS.** The chairperson may call a members' meeting to
8 submit to the members the question of revoking dissolution proceedings under s.
9 193.905. The dissolution proceedings are revoked if the proposed revocation is
10 approved at the members' meeting by a majority of the votes cast or, for a cooperative
11 with articles or bylaws requiring more than majority approval or other conditions for
12 approval, by a sufficient vote as required under the articles or bylaws or by satisfying
13 the other conditions for approval.

14 **(3) FILING WITH THE DEPARTMENT.** The chairperson of the board or the records
15 officer shall file with the department a notice of revocation promptly after the
16 revocation is approved as provided under sub. (2). The revocation is effective upon
17 filing of the notice under this subsection.

18 **193.925 Court-supervised voluntary dissolution.** After a notice of intent
19 to dissolve is filed as required under s. 193.905 (1) and before a certificate of
20 dissolution is issued under s. 193.905 (7), the cooperative or, for good cause shown,
21 a member or creditor of the cooperative may petition the circuit court for the county
22 where the registered address of the cooperative is located to have the dissolution
23 conducted under the supervision of the court. Section 193.905 does not apply to a
24 dissolution conducted under the supervision of the court under this section. Section
25 193.911 applies to a dissolution conducted under the supervision of the court under

ASSEMBLY BILL 1186**SECTION 78**

1 this section. The court may grant equitable relief that it deems appropriate in a
2 dissolution conducted under its supervision under this section, if the supervision
3 resulted from an application by the cooperative.

4 **193.931 Involuntary dissolution. (1) CAUSES OF ACTION.** (a) A member may
5 bring an action against a cooperative for dissolution, liquidation, and equitable relief
6 if any of the following apply:

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

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

13 3. For a period that includes the time when 2 consecutive regular members'
14 meetings were held, the members failed to elect successors to directors whose terms
15 expired or would have expired upon the election and qualification of their successors.

16 4. The cooperative's assets are being misapplied or wasted.

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

19 (b) A creditor may bring an action against a cooperative for dissolution,
20 liquidation, and equitable relief if any of the following apply:

21 1. The creditor has obtained a money judgment against the cooperative and an
22 execution on that judgment has been returned unsatisfied.

23 2. The cooperative has admitted in writing that a claim of the creditor against
24 the cooperative is due and owing and that the cooperative is unable to pay its debts
25 in the ordinary course of business.

ASSEMBLY BILL 1186

1 (c) Except as provided in sub. (1m), the attorney general may bring an action
2 against a cooperative for dissolution and liquidation, and for equitable relief for
3 persons other than the attorney general, if any of the following apply:

4 1. The articles and certificate of organization of the cooperative were procured
5 through fraud.

6 2. The cooperative was organized for a purpose prohibited by state law or not
7 permitted by this chapter.

8 3. The cooperative has knowingly, with intentional disregard of the harm that
9 the provision is intended to avert, violated a provision of this chapter, has violated
10 a provision of this chapter more than once, or has violated more than one provision
11 of this chapter.

12 4. The actions of the cooperative, or its failure to act, constitutes surrender or
13 abandonment of the business of the cooperative.

14 **(1m) NOTICE TO COOPERATIVE BY ATTORNEY GENERAL.** The attorney general may
15 not commence an action under sub. (1) (c) until 30 days after giving notice to the
16 cooperative of the reason for the action. If the reason for the action is an act that the
17 cooperative has done or failed to do and the act or omission may be corrected by
18 amending the articles or bylaws or by performing or abstaining from the act, the
19 attorney general shall give the cooperative 30 additional days to make the correction
20 before filing the action. If the cooperative makes the correction before the expiration
21 of the 30 additional days, the attorney general may not bring an action under sub.
22 (1) (c) based upon that act or omission.

23 **(2) FINANCIAL CONDITION OF COOPERATIVE.** In determining whether to order a
24 remedy in an action under sub. (1), the court shall consider the financial condition

ASSEMBLY BILL 1186**SECTION 78**

1 of the cooperative. The court may not refuse to order a remedy solely on the ground
2 that the cooperative has accumulated operating profits or current operating profits.

3 (3) ALTERNATIVE REMEDIES. In deciding whether to order dissolution in an action
4 under sub. (1), the court shall consider whether other relief suggested by one or more
5 parties would permanently remedy the cause of the action and, if so, may order such
6 other relief.

7 (4) EXPENSES. If the court finds that a party to an action under sub. (1) has acted
8 arbitrarily, vexatiously, or in bad faith, the court may award reasonable expenses,
9 including attorney fees and disbursements, to any of the other parties.

10 (5) VENUE. An action under sub. (1) shall be brought in the circuit court for the
11 county where the registered address of the cooperative is located.

12 (6) PARTIES. It is not necessary to make members parties to an action under sub.
13 (1).

14 **193.935 Procedure in involuntary or court-supervised voluntary**
15 **dissolution.** (1) ACTION BEFORE HEARING. In a dissolution conducted under the
16 supervision of a court under s. 193.925 or in any action under s. 193.931 (1) the court
17 may take any of the following actions before an initial hearing is completed:

18 (a) Issue injunctions.

19 (b) Appoint receivers temporarily, until the conclusion of a hearing under sub.
20 (2), with all powers and duties that the court directs.

21 (c) Take actions required to preserve the cooperative's assets wherever located.

22 (d) Carry on the business of the cooperative.

23 (2) APPOINTMENT OF RECEIVER. In a dissolution conducted under the supervision
24 of a court under s. 193.925 or in any action under s. 193.931 (1) the court may appoint
25 a receiver after a hearing is completed, following notice to the parties as directed by

ASSEMBLY BILL 1186

1 the court. The receiver shall collect the cooperative's assets and amounts owing to
2 the cooperative by subscribers on account of an unpaid portion of the consideration
3 for the issuance of shares. Subject to the order of the court, the receiver may continue
4 the business of the cooperative and lease or dispose of the property and assets of the
5 cooperative at public or private sale.

6 **(3) DISTRIBUTION OF ASSETS.** In a dissolution conducted under the supervision
7 of a court under s. 193.925 or in any action under s. 193.931 (1), the court shall apply
8 the assets of the cooperative and the proceeds resulting from the lease or disposition
9 of the cooperative's property by following all of the following steps, in alphanumerical
10 order:

11 (a) Applying the assets and proceeds to cover attorney fees and disbursements
12 made in connection with the proceedings and the other costs and expenses of the
13 proceedings.

14 (b) Applying the assets and proceeds to cover debts, taxes, and assessments
15 owing to the United States, this state, and other states, in that order.

16 (c) Applying the assets and proceeds to cover worker's compensation claims for
17 which the cooperative is liable under ch. 102, except that this paragraph does not
18 apply to a claim if, at the time of injury, as defined in s. 102.01 (2) (g), the cooperative
19 had in force a policy of worker's compensation insurance as required under s. 102.28
20 (2) (a).

21 (d) Applying the assets and proceeds to cover claims of employees for services
22 performed within 3 months preceding the appointment of the receiver, if any.

23 (e) Applying the assets and proceeds to cover other claims proved and allowed.

24 (f) Distributing the assets and proceeds to the members or pursuant to a
25 liquidation plan approved by the members.

ASSEMBLY BILL 1186**SECTION 78**

1 **193.941 Receiver qualifications and powers. (1) QUALIFICATIONS.** A
2 receiver appointed under s. 193.935 (1) or (2) shall be an individual, a domestic
3 business entity, or a foreign business entity authorized to transact business in this
4 state and shall give a bond as directed by the court with the sureties required by the
5 court.

6 **(2) POWERS.** A receiver may bring and defend suits.

7 **193.951 Filing claims in involuntary or court-supervised voluntary**
8 **dissolution proceedings. (1) FILING UNDER OATH.** In a dissolution conducted under
9 the supervision of a court under s. 193.925 or in any action under s. 193.931 (1), the
10 court may require all creditors and claimants of the cooperative to file their claims,
11 under oath and in a form prescribed by the court, with the court or with a receiver
12 appointed under s. 193.935 (1) or (2).

13 **(2) DATE TO FILE A CLAIM; NOTICE.** If the court requires the filing of claims in a
14 dissolution conducted under the supervision of a court under s. 193.925 or in any
15 action under s. 193.931 (1), the court shall do all of the following:

16 (a) Set a date at least 120 days after the date the order is filed, as the last day
17 for the filing of claims.

18 (b) Prescribe a notice of the fixed date that shall be given to creditors and
19 claimants.

20 **(3) CLAIMS BARRED; EXTENSION OF TIME FOR FILING.** The court may prohibit any
21 person who fails to file a claim before the date established under sub. (2) (a) from
22 claiming an interest in or receiving payment out of the property and assets of the
23 cooperative. At any time before the date established under sub. (2) (a), the court may
24 extend the time for filing claims beyond the date established under sub. (2) (a).

ASSEMBLY BILL 1186**1 193.955 Discontinuance of court-supervised dissolution proceedings.**

2 A dissolution conducted under the supervision of a court under s. 193.925 or any
3 action under s. 193.931 (1) may be discontinued at any time during the dissolution
4 proceedings if it is established that cause for dissolution does not exist. The court
5 shall dismiss the proceedings and direct the receiver appointed under s. 193.935 (1)
6 or (2), if any, to deliver to the cooperative its remaining property and assets.

7 **193.961 Order of dissolution. (1) ISSUANCE; EFFECTIVE DATE.** After
8 distribution of a cooperative's assets and proceeds under s. 193.935 (3), the court
9 shall issue an order dissolving the cooperative. The dissolution is effective upon
10 issuance of the order.

11 **(2) FILING.** After the court issues an order under sub. (1), the court shall file
12 a certified copy of the order with the department. The department may not charge
13 a fee for filing the order.

14 **193.971 Barring of claims. (1) CLAIMS BARRED.** Except as provided in s.
15 193.951 (3), a creditor or claimant who does not file a claim or bring an action during
16 the pendency of the dissolution proceedings or has not brought an action before the
17 commencement of the dissolution proceedings, and all those claiming through or
18 under the creditor or claimant, are forever barred from bringing an action to collect
19 on that claim or otherwise enforcing it, except as provided in this section.

20 **(2) CERTAIN CLAIMS ALLOWED FOR GOOD CAUSE.** Except as provided in s. 193.951
21 (3), within one year after the date on which the articles of dissolution are filed under
22 s. 193.905 (5) or an order of dissolution is issued under s. 193.961, a creditor or
23 claimant who shows good cause for not having previously filed the claim may apply
24 to the circuit court to allow a claim against the cooperative's undistributed assets or,
25 if the undistributed assets are not sufficient to satisfy the claim, against a person to

ASSEMBLY BILL 1186**SECTION 78**

1 the extent of the distributions received by that person in the dissolution by virtue of
2 that person's status as a member.

3 **(3)** CERTAIN OMITTED CLAIMS ALLOWED. A person to whom is owed a debt,
4 obligation, or liability incurred during an action under s. 193.931 (1), but who is not
5 paid before the distribution of assets and proceeds under s. 193.935 (3) (f), may bring
6 an action to recover on the claim against the officers, directors, or members of the
7 cooperative before the expiration of the applicable statute of limitations.

8 **SECTION 79.** 196.01 (10) of the statutes is amended to read:

9 196.01 **(10)** "Telecommunications utility" means any person, corporation,
10 company, cooperative, unincorporated cooperative association, partnership,
11 association and lessees, trustees or receivers appointed by any court that owns,
12 operates, manages or controls any plant or equipment used to furnish
13 telecommunications services within the state directly or indirectly to the public.
14 "Telecommunications utility" does not include a telecommunications carrier.

15 **SECTION 80.** 196.02 (2) of the statutes is amended to read:

16 196.02 **(2)** DEFINITION; CLASSIFICATION. In this subsection, "public utility" does
17 not include a telecommunications cooperative, an unincorporated
18 telecommunications cooperative association, or a small telecommunications utility
19 except as provided under s. 196.205 or 196.215 (2) and does not include an alternative
20 telecommunications utility. The commission shall provide for a comprehensive
21 classification of service for each public utility. The classification may take into
22 account the quantity used, the time when used, the purpose for which used, and any
23 other reasonable consideration. Each public utility shall conform its schedules of
24 rates, tolls and charges to such classification.

25 **SECTION 81.** 196.09 (1) of the statutes is amended to read:

ASSEMBLY BILL 1186

1 196.09 (1) In this section, “public utility” does not include a
2 telecommunications cooperative or an unincorporated telecommunications
3 cooperative association except as provided under s. 196.205. In subs. (2) to (7),
4 “public utility” does not include a telecommunications utility. Subsection (9) only
5 applies to a telecommunications utility. Every public utility shall file with the
6 commission, within such time as may be required by the commission, its estimate of
7 the annual rate of depreciation required for each of its classes of fixed capital used
8 for public utility purposes, and of the composite annual rate of depreciation required
9 for such fixed capital as an aggregate, which shall constitute the public utility’s
10 estimates of the amount which should be returned to it out of its rates for service, to
11 meet the depreciation of its property.

12 **SECTION 82.** 196.11 (2) of the statutes is amended to read:

13 196.11 (2) Any arrangement under this section shall be under the supervision
14 and regulation of the commission. The commission may order any rate, charge or
15 regulation which the commission deems necessary to give effect to the arrangement.
16 The commission may make any change in a rate, charge or regulation as the
17 commission determines is necessary and reasonable and may revoke its approval
18 and amend or rescind all orders relative to any arrangement. This subsection does
19 not apply to telecommunications cooperatives, unincorporated telecommunications
20 cooperative associations, or telecommunications utilities.

21 **SECTION 83.** 196.20 (3) of the statutes is amended to read:

22 196.20 (3) Except as provided in subs. (1m) and (5) (a), this section does not
23 apply to telecommunications cooperatives, unincorporated telecommunications
24 cooperative associations, or small telecommunications utilities unless made subject
25 to this section under s. 196.205 or 196.215 (2).

ASSEMBLY BILL 1186**SECTION 84**

1 **SECTION 84.** 196.205 (1m) of the statutes is amended to read:

2 196.205 (1m) A telecommunications cooperative or an unincorporated
3 telecommunications cooperative association may elect to be subject to ss. 196.28 and
4 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (1), 196.11
5 (2), 196.20 and 196.26 in any of the following ways:

6 (a) By amendment of the articles of incorporation of the cooperative under s.
7 185.51 or the articles of organization of the association under s. 193.221.

8 (c) By a majority of the voting members of the board of directors of the
9 cooperative or association.

10 **SECTION 85.** 196.205 (2) of the statutes is amended to read:

11 196.205 (2) Notwithstanding sub. (1m), a telecommunications cooperative or
12 an unincorporated telecommunications cooperative association shall be subject to s.
13 196.26 if it is a party in a proceeding on a complaint specified in s. 196.26 (1) (b) or
14 (c).

15 **SECTION 86.** 196.26 (4) (a) of the statutes is amended to read:

16 196.26 (4) (a) This section does not apply to any rate, toll, charge or schedule
17 of any telecommunications cooperative or unincorporated telecommunications
18 cooperative association, except as provided under s. 196.205 or unless at least 5% of
19 the customers of the telecommunications cooperative or association file a complaint
20 with the commission that the rate, toll, charge or schedule is in any respect
21 unreasonable, insufficient or unjustly discriminatory.

22 **SECTION 87.** 196.28 (4) of the statutes is amended to read:

23 196.28 (4) This section does not apply to rates, tolls or charges of a
24 telecommunications cooperative, an unincorporated telecommunications

ASSEMBLY BILL 1186

1 cooperative association, or a small telecommunications utility except as provided in
2 s. 196.205 or 196.215 (2).

3 **SECTION 88.** 196.37 (4) of the statutes is amended to read:

4 196.37 (4) This section does not apply to rates, tolls or charges of a
5 telecommunications cooperative, an unincorporated telecommunications
6 cooperative association, or a small telecommunications utility except as provided in
7 s. 196.205 or 196.215 (2).

8 **SECTION 89.** 196.50 (2) (b) of the statutes is amended to read:

9 196.50 (2) (b) A certificate, franchise, license or permit, indeterminate or
10 otherwise, in effect on September 1, 1994, for a telecommunications utility shall
11 remain in effect and shall have the effect of a certificate of authority. A
12 telecommunications utility is not required to apply for a new certificate of authority
13 to continue offering or providing service to the extent of the prior authorization. Each
14 telecommunications utility, including telecommunications cooperatives and
15 unincorporated telecommunications cooperative associations, shall have on file with
16 the commission under s. 196.19 a tariff that sets forth the rates, terms and conditions
17 for all services provided and a map that defines the geographical limits of the service
18 territory that the telecommunications utility is obliged to serve.

19 **SECTION 90.** 196.605 (1) of the statutes is amended to read:

20 196.605 (1) A public utility which is a cooperative association incorporated
21 under ch. 185 or 193 to furnish telecommunications service in rural areas on a
22 nonprofit basis with a telecommunications utility financed in part through a loan
23 from the United States under the rural electrification act of 1936, 7 USC 901 to
24 950aaa-5, as amended, may require each of its local service telecommunications
25 patrons to deposit with the association the amount of the membership fee or other

ASSEMBLY BILL 1186**SECTION 90**

1 form of capital representing the proportional share of the total equity capital of the
2 association required as a condition of federal financing. The membership fee or other
3 form of equity capital attributable to each local service patron may be collected by
4 the association in installments in connection with billings for service. The required
5 deposits of equity capital shall be segregated in the billing from service charges and
6 shall be credited when received on the membership or equity capital account of the
7 patron.

8 **SECTION 91.** 196.807 (1) (a) of the statutes is amended to read:

9 196.807 (1) (a) "Affiliate or utility" means a nonutility affiliate, holding
10 company system, public utility or cooperative association organized under ch. 185 or
11 193.

12 **SECTION 92.** 199.03 (12) of the statutes is amended to read:

13 199.03 (12) "Public utility" means any person, except a town, village, city or
14 sanitary district, who owns, operates, manages or controls any plant or equipment
15 or any part of a plant or equipment, within the state for the production, transmission,
16 delivery or furnishing of heat, light, water, telecommunications service or power
17 either directly or indirectly to or for the public. "Public utility" includes any person
18 engaged in the transmission or delivery of natural gas for compensation within this
19 state by means of pipes or mains. "Public utility" does not include a cooperative
20 ~~association organized under ch. 185 for the purpose of generating, distributing, or~~
21 ~~furnishing electric energy to its members only, or a cooperative organized under ch.~~
22 ~~185 or 193 for the purpose of generating, distributing or furnishing~~
23 ~~telecommunications service or electric energy to its members only.~~

24 **SECTION 93.** 201.01 (3) (d) of the statutes is amended to read:

ASSEMBLY BILL 1186

1 201.01 (3) (d) Any securities issued by a corporation organized under ch. 185
2 or 193 for the purpose of furnishing telecommunications service in rural areas.

3 **SECTION 94.** 223.105 (1) (b) of the statutes is amended to read:

4 223.105 (1) (b) “Organization” means any corporation, unincorporated
5 cooperative association, limited liability company, association, partnership or
6 business trust, other than a national bank, state or federal savings and loan
7 association, state or federal savings bank or federal credit union or other than a
8 corporation, limited liability company, association or partnership, all of whose
9 shareholders or members are licensed under SCR 40.02.

10 **SECTION 95.** 231.35 (2) (b) of the statutes is amended to read:

11 231.35 (2) (b) A cooperative organized under ch. 185 or 193 that consists of one
12 or more rural hospitals, each with no more than 100 beds.

13 **SECTION 96.** 234.59 (1) (d) 3. of the statutes is amended to read:

14 234.59 (1) (d) 3. A dwelling unit in a condominium ~~or~~ a cooperative, or an
15 unincorporated cooperative association, together with an interest in common areas,
16 if the unit is or will be the principal residence of an applicant.

17 **SECTION 97.** 234.622 (7) of the statutes is amended to read:

18 234.622 (7) “Qualifying dwelling unit” means a dwelling unit, not including a
19 mobile home as defined in s. 66.0435, located in this state, habitable as a permanent
20 residence and to which property taxes or special assessments are, or may
21 conveniently be, allocated and up to one acre of land appertaining to it held in the
22 same ownership as the dwelling unit. For purposes of ss. 234.621 to 234.626,
23 “qualifying dwelling unit” includes a unit in a condominium or in a cooperative or an
24 unincorporated cooperative association or in a multi-unit dwelling with 4 or fewer
25 units, but in all of these 3 cases only the portion of taxes or special assessments

ASSEMBLY BILL 1186**SECTION 97**

1 allocable to the unit lived in by the participant may qualify for loans under ss.
2 234.621 to 234.626.

3 **SECTION 98.** 421.301 (28) of the statutes is amended to read:

4 421.301 (28) "Organization" means a corporation, government or
5 governmental subdivision or agency, trust, estate, limited liability company,
6 partnership, cooperative or association other than a cooperative organized under ch.
7 185 or 193 which has gross annual revenues not exceeding \$5 million.

8 **SECTION 99.** 445.01 (8) of the statutes is amended to read:

9 445.01 (8) "Person" includes firm, corporation, partnership, cooperative,
10 unincorporated cooperative association, and association of individuals.

11 **SECTION 100.** 445.12 (3) (a) of the statutes is amended to read:

12 445.12 (3) (a) The solicitation of memberships or the sale of stock or
13 memberships in any association organized under ch. 185 or 193 by any person who
14 is not a licensed funeral director.

15 **SECTION 101.** 551.22 (12) of the statutes is amended to read:

16 551.22 (12) Any securities of a cooperative corporation organized under ch. 185
17 or 193.

18 **SECTION 102.** 560.16 (1) (c) (intro.) of the statutes is amended to read:

19 560.16 (1) (c) (intro.) "Employee-owned business" means a business located in
20 this state which is organized in a manner determined by the secretary to involve
21 substantial employee participation or a cooperative organized under ch. 185 or 193
22 or a corporation in which the employees own the stock of the corporation through an
23 employee stock ownership plan as defined under 26 USC 4975 (e) (7) and in which:

24 **SECTION 103.** 560.17 (1) (b) of the statutes is amended to read:

25 560.17 (1) (b) "Business" includes cooperatives organized under ch. 185 or 193.

ASSEMBLY BILL 1186**SECTION 104**

1 **SECTION 104.** 560.9801 (1) (b) of the statutes is amended to read:

2 560.9801 (1) (b) A nonprofit cooperative organized under ch. 185 or 193.

3 **SECTION 105.** 560.9801 (3) (a) 7. of the statutes is amended to read:

4 560.9801 (3) (a) 7. If the housing is owned and occupied by members of a
5 cooperative or an unincorporated cooperative association, fees paid to a person for
6 managing the housing.

7 **SECTION 106.** 560.9804 (2) (e) of the statutes is amended to read:

8 560.9804 (2) (e) A cooperative organized under ch. 185 or 193, if the articles of
9 incorporation, articles of organization, or bylaws of the cooperative limit the rate of
10 dividend that may be paid on all classes of stock.

11 **SECTION 107.** 600.03 (37m) of the statutes, as affected by 2005 Wisconsin Act
12 (Senate Bill 617), is amended to read:

13 600.03 (37m) "Preferred provider plan" means a health care plan, as defined
14 in s. 628.36 (2) (a) 1., that is offered by an organization established under ch. 185 or
15 193, 611, 613, or 614 or issued a certificate of authority under ch. 618 and that makes
16 available to its enrollees, without referral and for consideration other than
17 predetermined periodic fixed payments, coverage of either comprehensive health
18 care services or a limited range of health care services, regardless of whether the
19 health care services are performed by participating, as defined in s. 609.01 (3m), or
20 nonparticipating providers, as defined in s. 609.01 (5m).

21 **SECTION 108.** 609.01 (2) of the statutes is amended to read:

22 609.01 (2) "Health maintenance organization" means a health care plan
23 offered by an organization established under ch. 185 or 193, 611, 613 or 614 or issued
24 a certificate of authority under ch. 618 that makes available to its enrollees, in

ASSEMBLY BILL 1186**SECTION 108**

1 consideration for predetermined periodic fixed payments, comprehensive health
2 care services performed by providers participating in the plan.

3 **SECTION 109.** 616.09 (1) (c) 1. of the statutes is amended to read:

4 616.09 (1) (c) 1. Plans authorized under s. 616.06 are subject to ch. 185 or 193,
5 as applicable, except that ss. 185.03 (5) and (6), 185.05 (1) (c), 185.55, 185.61, 185.62,
6 185.63, 185.64, 185.71 to 185.76 and, 185.81, 193.151, 193.215 (2) (a) 2., 193.225,
7 193.301 (9), 193.801, 193.805, 193.905 to 193.971, and those provisions applicable to
8 cooperatives or unincorporated cooperative associations with stock do not apply.

9 **SECTION 110.** 706.05 (2m) (b) 2. of the statutes, as affected by 2005 Wisconsin
10 Act 179, is amended to read:

11 706.05 (2m) (b) 2. Descriptions of property that is subject to liens granted on
12 property thereafter acquired by a rural electric cooperative organized under ch. 185,
13 or by a telephone cooperative, organized under ch. 185 or 193, by a pipeline company
14 under s. 76.02 (5), by a public utility under s. 196.01 (5) or, by a railroad under s.
15 195.02 (1), or by a water carrier under s. 195.02 (5).

16 **SECTION 111.** 815.18 (2) (c) of the statutes is amended to read:

17 815.18 (2) (c) "Debtor" means an individual. "Debtor" does not include an
18 association, a corporation, a partnership, a cooperative, an unincorporated
19 cooperative association, or a political body.

20 **SECTION 112.** 893.28 (2) of the statutes is amended to read:

21 893.28 (2) Continuous use of rights in real estate of another for at least 10 years
22 by a domestic corporation organized to furnish telegraph or telecommunications
23 service or transmit heat, power or electric current to the public or for public purposes,
24 or by a cooperative association organized under ch. 185 or 193 to furnish telegraph
25 or telecommunications service, or by a cooperative organized under ch. 185 to

ASSEMBLY BILL 1186**SECTION 112**

1 transmit heat, power or electric current to its members, establishes the prescriptive
2 right to continue the use, except as provided by s. 893.29. A person who has
3 established a prescriptive right under this subsection may commence an action to
4 establish prescriptive rights under ch. 843.

5 **SECTION 113.** 946.69 (1) (c) of the statutes is amended to read:

6 946.69 (1) (c) A cooperative association organized under ch. 185 or 193 to
7 furnish or provide telecommunications service, or a cooperative organized under ch.
8 185 to furnish or provide gas, electricity, power or water.

9 **SECTION 114.** 990.01 (14) of the statutes is amended to read:

10 990.01 (14) HOMESTEAD EXEMPTION. "Exempt homestead" means the dwelling,
11 including a building, condominium, mobile home, house trailer or cooperative or an
12 unincorporated cooperative association, and so much of the land surrounding it as
13 is reasonably necessary for its use as a home, but not less than 0.25 acre, if available,
14 and not exceeding 40 acres, within the limitation as to value under s. 815.20, except
15 as to liens attaching or rights of devisees or heirs of persons dying before the effective
16 date of any increase of that limitation as to value.

17 **SECTION 115. Effective date.**

18 (1) This act takes effect on September 1, 2005, or on the day after publication,
19 whichever is later.

20

(END)