

House Study Bill 532

Conference Committee Text

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1 1 Section 1. PURPOSE. The purpose of chapter 501 is to
1 2 provide an opportunity for producers of agricultural
1 3 commodities to contribute a portion of their production for a
1 4 single enterprise for purposes of enhancing the value of that
1 5 production and to restrict control of these enterprises to
1 6 agricultural producers.

1 7 Sec. 2. Section [203.1](#), subsection 8, Code Supplement 1995,
1 8 is amended to read as follows:

1 9 8. "Grain dealer" means a person who buys during any
1 10 calendar month five hundred bushels of grain or more from the
1 11 producers of the grain for purposes of resale, milling, or
1 12 processing. However, "grain dealer" does not include

— a

- any of

1 13 the following:

1 14 a. A producer of grain who is buying grain for the
1 15 producer's own use as seed or feed

— a

—

1 16 b. A person solely engaged in buying grain future
1 17 contracts on the board of trade

— a

—

1 18 c. A person who purchases grain only for sale in a
1 19 registered feed

— a

—

1 20 d. A person who purchases grain for sale in a
1 21 nonregistered customer-formula feed regulated by chapter 198,
1 22 who purchases less than a total of fifty thousand bushels of
1 23 grain annually from producers, and who is also exempt as an
1 24 incidental warehouse operator under chapter 203C

— a

—

1 25 e. A person engaged in the business of selling
1 26 agricultural seeds regulated by chapter 199

— a

—

1 27 f. A person buying grain only as a farm manager

— an

—

1 28 g. An executor, administrator, trustee, guardian, or
1 29 conservator of an estate

— a

—

1 30 h. A bargaining agent as defined in section 203A.1; or a
1 31 custom livestock feeder.

1 32 i. A cooperative corporation organized under chapter 501

1 33 that does not buy any grain from producers who are not members
1 34 and does not sell any grain.

1 35 SUBCHAPTER I

2 1 GENERAL PROVISIONS

2 2 Sec. 3. NEW SECTION. 501.101 DEFINITIONS.

2 3 As used in this chapter, unless the context requires
2 4 otherwise:

2 5 1. "Articles" means the cooperative's articles of
2 6 incorporation.

2 7 2. "Authorized person" means a person who is one of the
2 8 following:

2 9 a. A farming entity.

2 10 b. An individual or general partnership that owns land and
2 11 receives as rent a share of the crops or the animals raised on
2 12 the land if those crops or animals are a significant component
2 13 of the cooperative's business operations.

2 14 c. An employee of the cooperative who performs at least
2 15 one thousand hours of service for the cooperative in each
2 16 calendar year.

2 17 3. "Board" means the cooperative's board of directors.

2 18 4. "Cooperative" means a cooperative corporation organized
2 19 under this chapter or converted to this chapter pursuant to
2 20 section 501.601.

2 21 5. "Farming" means the same as section 9H.1

2 22 6. "Farming entity" means any one of the following:

2 23 a. A natural person or a fiduciary for a natural person
2 24 who regularly participates in physical labor or operations
2 25 management in a farming operation and files schedule F as part
2 26 of the person's annual form 1040 or form 1041 filing with the
2 27 United States internal revenue service.

2 28 b. A family farm corporation, family farm limited
2 29 liability company, family farm limited partnership, or family
2 30 trust, as defined in section 9H.1.

2 31 c. A general partnership, limited partnership, or limited
2 32 liability partnership composed exclusively of natural persons
2 33 or persons acting in a fiduciary capacity for the benefit of
2 34 natural persons, which has received at least sixty percent of
2 35 gross income from farming over its entire duration or the last
3 1 consecutive three-year period, whichever is less.

3 2 7. "Member" means a person who owns voting stock in a
3 3 cooperative.

3 4 8. "Shareholder" means a person who owns stock in a
3 5 cooperative, whether or not that stock has voting rights.

3 6 9. "Voting stock" means stock in a cooperative that has
3 7 voting rights.

3 8 Sec. 4. NEW SECTION. 501.102 PURPOSES AND POWERS.

3 9 1. A cooperative organized under this chapter has the
3 10 purpose of engaging in any lawful business unless a more
3 11 limited purpose is set forth in the articles.

3 12 2. Unless its articles provide otherwise, a cooperative
3 13 has perpetual duration and succession in its corporate name
3 14 and has the same powers as an individual to do all things
3 15 necessary or convenient to carry out its business and affairs,
3 16 including, without limitation, all of the powers enumerated in
3 17 sections 490.302 and 490.303.

3 18 Sec. 5. NEW SECTION. 501.103 LIMITED FARMING ACTIVITIES.

3 19 1. Notwithstanding section 9H.4, a cooperative may,
3 20 directly or indirectly, acquire or otherwise obtain or lease
3 21 agricultural land in this state, for as long as the
3 22 cooperative continues to meet the following requirements:

3 23 a. Farming entities own a majority of the stock and are
3 24 eligible to cast a majority of the votes at member meetings.

3 25 b. Authorized persons own at least three-fourths of the
3 26 stock and are eligible to cast at least three-fourths of the
3 27 votes at member meetings.

3 28 c. The cooperative does not, either directly or
3 29 indirectly, acquire or otherwise obtain or lease agricultural

3 30 land, if the total agricultural land either directly or
3 31 indirectly owned or leased by the cooperative would then
3 32 exceed one thousand five hundred acres.

3 33 2. A cooperative that claims that it is exempt from the
3 34 restrictions of section 9H.4 pursuant to subsection 1 shall
3 35 file an annual report with the secretary of state on or before
4 1 March 31 of each year on forms supplied by the secretary of
4 2 state. The report shall be signed by the president or the
4 3 vice president of the cooperative and shall contain the
4 4 following:

4 5 a. The cooperative's name and address.

4 6 b. A certification that the cooperative meets both of the
4 7 requirements of subsection 1.

4 8 c. The number of acres of agricultural land owned, leased
4 9 or held by the cooperative, including the following:

4 10 (1) The total number of acres in the state.

4 11 (2) The number of acres in each county identified by
4 12 county name.

4 13 (3) The number of acres owned.

4 14 (4) The number of acres leased.

4 15 (5) The number of acres held other than by ownership or
4 16 lease.

4 17 (6) The number of acres used for the production of row
4 18 crops.

4 19 3. The president or the vice president of the cooperative
4 20 who falsifies a report shall be guilty of perjury as provided
4 21 in section 720.2.

4 22 4. In the event of a transfer of stock by operation of law
4 23 as a result of death, divorce, bankruptcy, or pursuant to a
4 24 security interest, the cooperative may disregard the transfer
4 25 for purposes of determining compliance with subsection 1 for a
4 26 period of two years after the transfer.

4 27 Sec. 6. NEW SECTION. 501.104 NAME.

4 28 The name of a cooperative organized under this chapter must
4 29 contain the word "cooperative", "coop", or "co-op", and the
4 30 name must be distinguishable from the names of cooperatives
4 31 organized under this chapter or another chapter, or foreign
4 32 cooperatives authorized to do business in this state.

4 33 Sec. 7. NEW SECTION. 501.105 EXECUTION AND FILING OF
4 34 DOCUMENTS.

4 35 1. The secretary of state may prescribe and furnish on
5 1 request forms for the proper administration of this chapter.
5 2 If the secretary of state has prescribed a mandatory form for
5 3 a document, then that form must be on the prescribed form.

5 4 2. Articles must be signed by all of the incorporates; and
5 5 all other documents filed with the secretary of state must be
5 6 signed by one of the cooperative's officers. The printed name
5 7 and capacity of each signatory must appear in proximity to the
5 8 signatory's signature. The secretary of state may accept a
5 9 document containing a copy of the signature. A document is
5 10 not required to contain a corporate seal, an acknowledgment,
5 11 or a verification.

5 12 3. The secretary of state shall collect the following
5 13 fees:

5 14 a. Twenty dollars upon the filing of original or amended
5 15 articles or articles of merger.

5 16 b. Five dollars upon the filing of all other required
5 17 documents.

5 18 c. Five dollars per document and fifty cents per page for
5 19 copying and certifying a document.

5 20 4. A document is effective at the later of the following
5 21 times:

5 22 a. The time of filing on the date it is filed, as
5 23 evidenced by the secretary of state's date and time
5 24 endorsement on the original document.

5 25 b. The delayed effective time and date specified in the
5 26 document. If a delayed effective date but no time is

5 27 specified in the document, the document is effective at the
5 28 close of business on that date. A delayed effective date for
5 29 a document shall not be later than the ninetieth day after the
5 30 date it is filed.

5 31 5. A document filed under this section may be corrected if
5 32 the document contains an incorrect statement or the execution
5 33 of the document was defective. A document is corrected by
5 34 filing with the secretary of state articles of correction
5 35 which describe the document to be corrected, including its
6 1 filing date or a copy of the document. The articles must
6 2 specify and correct the incorrect statement or defective
6 3 execution. Articles of correction are effective on the
6 4 effective date of the document it corrects except as to
6 5 persons relying on the original document and adversely
6 6 affected by the correction. As to those persons, articles of
6 7 correction are effective when filed.

6 8 6. The secretary of state shall forward for recording a
6 9 copy of each original, amended, and restated articles,
6 10 articles of merger, articles of consolidation, and articles of
6 11 dissolution to the recorder of the county in which the
6 12 cooperative has its principal place of business, or in the
6 13 case of a merger or consolidation, to the recorders of each of
6 14 the counties in which the merging or consolidating
6 15 cooperatives have their principal offices.

6 16 Sec. 8. NEW SECTION. 501.106 REGISTERED OFFICE.

6 17 1. A cooperative must continuously maintain in this state
6 18 a registered office that may be the same as any of its places
6 19 of business, and a registered agent, who may be any of the
6 20 following:

6 21 a. An individual who resides in this state and whose
6 22 business office is identical with the registered office.

6 23 b. A domestic corporation or not-for-profit domestic
6 24 corporation whose business office is identical with the
6 25 registered office.

6 26 c. A foreign corporation or not-for-profit foreign
6 27 corporation authorized to transact business in this state
6 28 whose business office is identical with the registered office.

6 29 2. A corporation may change its registered office or
6 30 registered agent by delivering to the secretary of state for
6 31 filing a statement of change that sets forth all of the
6 32 following:

6 33 a. The name of the cooperative.

6 34 b. The street address of its current registered office.

6 35 c. If the street address of the current registered office
7 1 is to be changed, the street address of the new registered
7 2 office.

7 3 d. The name of its current registered agent.

7 4 e. If the current registered agent is to be changed, the
7 5 name of the new registered agent and the new agent's written
7 6 consent, either on the statement or attached to it, to the
7 7 appointment.

7 8 f. That after the change or changes are made, the street
7 9 addresses of its registered office and the business office of
7 10 its registered agent will be identical.

7 11 3. a. If a registered agent changes the street address of
7 12 the registered agent's business office, the registered agent
7 13 may change the street address of the registered office of any
7 14 cooperative for which the person is the registered agent by
7 15 notifying the cooperative in writing of the change and
7 16 signing, either manually or in facsimile, and delivering to
7 17 the secretary of state for filing, a statement that provides
7 18 for a registered office and a registered agent as provided in
7 19 this section, and which recites that the cooperative has been
7 20 notified of the change.

7 21 b. If a registered agent changes the registered agent's
7 22 business address to another place, the registered agent may
7 23 change the business address and the address of the registered

7 24 agent by filing a statement as required in paragraph "a" for
7 25 each cooperative, or a single statement for all cooperatives
7 26 named in the notice, except that it need be signed only by the
7 27 registered agent or agents or be responsive to subsection 2,
7 28 paragraph "e". The statement must recite that a copy of the
7 29 statement has been mailed to each cooperative named in the
7 30 notice.

7 31 4. A cooperative may also change its registered office or
7 32 registered agent in its annual report.

7 33 Sec. 9. NEW SECTION. 501.107 RECORDS AND REPORTS.

7 34 The provisions of sections 490.1601 through 490.1622 shall
7 35 apply to cooperatives organized under this chapter in the same
8 1 manner as the provisions apply to corporations organized under
8 2 chapter 490.

8 3 Sec. 10. NEW SECTION. 501.108 QUO WARRANTO.

8 4 The attorney general alone shall have the right to inquire
8 5 into whether a cooperative has the right to exist or continue
8 6 under this chapter. If the secretary of state is informed
8 7 that a cooperative is not functioning as a cooperative, the
8 8 secretary of state shall notify the attorney general. If the
8 9 attorney general finds reasonable cause that the cooperative
8 10 is not functioning as provided under this chapter, the
8 11 attorney general shall bring action to wind up the affairs of
8 12 the cooperative.

8 13 SUBCHAPTER II

8 14 ARTICLES AND BYLAWS

8 15 Sec. 11. NEW SECTION. 501.201 INCORPORATION.

8 16 Three or more individuals may organize a cooperative under
8 17 this chapter by executing and delivering articles to the
8 18 secretary of state.

8 19 Sec. 12. NEW SECTION. 501.202 ARTICLES OF INCORPORATION.

8 20 1. The initial articles must set forth all of the
8 21 following:

8 22 a. The name, address, and occupation of each incorporator.

8 23 b. The names and addresses of the initial directors.

8 24 c. The street address of the cooperative's initial
8 25 registered office and the name of its initial registered agent
8 26 at that office.

8 27 2. The articles must set forth all of the following:

8 28 a. The name that satisfies the requirements of section
8 29 501.104.

8 30 b. A statement that it is organized under this chapter.

8 31 c. Its duration, which may be perpetual.

8 32 d. The classes of stock and the authorized number of
8 33 shares of each class.

8 34 e. The quorum required for each member meeting.

8 35 f. The member voting rules.

9 1 3. The articles may set forth any other provision
9 2 consistent with law.

9 3 Sec. 13. NEW SECTION. 501.203 AMENDED AND RESTATED
9 4 ARTICLES OF INCORPORATION.

9 5 1. A cooperative may amend its articles at any time to add
9 6 or change a provision that is required or permitted in the
9 7 articles or to delete a provision not required in the
9 8 articles.

9 9 2. A cooperative may restate its articles at any time. A
9 10 restatement of the articles must contain the information
9 11 required by section 501.202, subsection 2, and may set forth
9 12 any other provision consistent with law.

9 13 3. If the board recommends the amendment or restatement to
9 14 the members, the amendment or restatement must be adopted by
9 15 the members by a vote of two-thirds of the votes cast.

9 16 4. If the board does not recommend the amendment or
9 17 restatement to the members, then the amendment or restatement
9 18 must be adopted by the members by a vote of two-thirds of the
9 19 votes cast on a ballot in which a majority of all votes are
9 20 cast.

9 21 Sec. 14. NEW SECTION. 501.204 BYLAWS.

9 22 The board may adopt or amend the cooperative's bylaws by a
9 23 vote of three-fourths of the board. The members may adopt or
9 24 amend the cooperative's bylaws by a vote of three-fourths of
9 25 the votes cast on a ballot in which a majority of all votes
9 26 are cast. A bylaw provision adopted by the members shall not
9 27 be amended or repealed by the directors.

9 28 SUBCHAPTER III
9 29 MEMBERS

9 30 Sec. 15. NEW SECTION. 501.301 LIABILITY OF MEMBERS.

9 31 A member is not personally liable for the acts or debts of
9 32 the cooperative.

9 33 Sec. 16. NEW SECTION. 501.302 CALLING AND NOTICE OF
9 34 MEETINGS.

9 35 1. A cooperative shall hold an annual member meeting at a
10 1 time and place fixed in accordance with the bylaws.

10 2 2. The board may call special member meetings, and the
10 3 board shall call a special member meeting upon the written
10 4 demand of twenty percent of the members.

10 5 3. A cooperative shall give each member at least ten days
10 6 advanced notice of the time, place, and the issues to be
10 7 considered at each member meeting. This notice may be given
10 8 in person or by mail to the last known address of the member,
10 9 or the notice requirement may be met by the member waiving the
10 10 notice.

10 11 4. The record date for determining the members entitled to
10 12 notice of and to vote at a member meeting is the close of
10 13 business on the day before the first notices for the meeting
10 14 are delivered or mailed.

10 15 Sec. 17. NEW SECTION. 501.303 CONDUCT OF MEETINGS.

10 16 1. Only those issues included in the notice of a member
10 17 meeting may be considered at that meeting.

10 18 2. A member may vote at a member meeting in person or by
10 19 signed absentee ballot that specifies the issue and the
10 20 member's vote on that issue. If the board makes available an
10 21 absentee ballot form, then that form must be used to cast an
10 22 absentee ballot on that issue.

10 23 Sec. 18. NEW SECTION. 501.304 MEMBER INFORMATION.

10 24 The board shall adopt a policy which permits the
10 25 distribution of information to all of the members upon the
10 26 request of a member when the purpose of the request concerns
10 27 directly the action of the board. Upon receipt of the
10 28 information and the request of a member, the board shall
10 29 distribute the information to all of the members. The
10 30 cooperative may charge the requesting member the costs
10 31 incurred by the cooperative in distributing the information.

10 32 SUBCHAPTER IV

10 33 DIRECTORS AND OFFICERS

10 34 Sec. 19. NEW SECTION. 502.401 NUMBER AND ELECTION.

10 35 1. The affairs of a cooperative shall be managed by a
11 1 board of not less than three directors.

11 2 2. The members shall elect the directors as prescribed in
11 3 the articles or bylaws.

11 4 3. Each director shall serve the term prescribed in the
11 5 articles or bylaws. The terms may be staggered.

11 6 Sec. 20. NEW SECTION. 502.402 VACANCIES.

11 7 1. A director may resign at any time by delivering written
11 8 notice to the board chairperson or the board secretary. A
11 9 resignation is effective when the notice is delivered unless
11 10 the notice specifies a later effective date.

11 11 2. The members may remove one or more directors with or
11 12 without cause unless the articles provide that directors may
11 13 be removed only for cause.

11 14 3. The articles may authorize the board to remove a
11 15 director for a cause specified in the articles.

11 16 4. Unless the articles or bylaws provide otherwise, the
11 17 board shall fill each vacancy for the remainder of the vacant

11 18 term. If the directors remaining in office constitute fewer
11 19 than a quorum of the board, they may fill the vacancy by the
11 20 affirmative vote of a majority of all the directors remaining
11 21 in office.

11 22 Sec. 21. NEW SECTION. 502.403 BOARD ACTION.

11 23 1. The board may hold regular or special meetings in or
11 24 out of this state. A quorum of the board consists of a
11 25 majority of the directors.

11 26 2. Unless the articles or bylaws provide otherwise:

11 27 a. Regular board meetings may be held without notice of
11 28 the date, time, place, or purpose of the meeting.

11 29 b. Special board meetings must be preceded by at least two
11 30 days' notice of the date, time, and place of the meeting; but
11 31 the notice need not describe the purpose of the special
11 32 meeting.

11 33 c. The board may create one or more committees composed of
11 34 directors, and specify the duties and authority of each
11 35 committee.

12 1 d. The board may permit any number of directors to
12 2 participate in a regular or special meeting by, or conduct the
12 3 meeting through, the use of any means of communication by
12 4 which all directors participating may simultaneously hear each
12 5 other during the meeting.

12 6 e. Action required or permitted by this chapter to be
12 7 taken at a board meeting may be taken without a meeting if the
12 8 action is taken by all members of the board. The action must
12 9 be evidenced by one or more written consents describing the
12 10 action taken, signed by each director, and included in the
12 11 minutes or filed with the corporate records reflecting the
12 12 action taken. Action taken under this section is effective
12 13 when the last director signs the consent, unless the consent
12 14 specifies a different effective date. A consent signed under
12 15 this section has the effect of a meeting vote and may be
12 16 described as such in any document.

12 17 3. A director may waive any notice required by this
12 18 chapter, the articles, or the bylaws before or after the date
12 19 and time stated in the notice. The waiver must be in writing,
12 20 signed by the director entitled to the notice, and filed with
12 21 the minutes or corporate records. A director's attendance at
12 22 or participation in a meeting waives any required notice to
12 23 that director of the meeting unless the director at the
12 24 beginning of the meeting or promptly upon the director's
12 25 arrival objects to holding the meeting or transacting business
12 26 at the meeting and does not thereafter vote for or assent to
12 27 action taken at the meeting.

12 28 Sec. 22. NEW SECTION. 502.404 DIRECTOR CONFLICT OF
12 29 INTEREST.

12 30 1. A conflict of interest transaction is a transaction
12 31 with the cooperative in which a director has a direct or
12 32 indirect interest. A conflict of interest transaction is not
12 33 voidable by the cooperative solely because of the director's
12 34 interest in the transaction if any one of the following is
12 35 true:

13 1 a. The material facts of the transaction and the
13 2 director's interest were disclosed or known to the board or a
13 3 board committee and the board or committee authorized,
13 4 approved, or ratified the transaction. For purposes of this
13 5 paragraph, a conflict of interest transaction is authorized,
13 6 approved, or ratified if it receives the affirmative vote of a
13 7 majority of the directors on the board or on the committee who
13 8 have no direct or indirect interest in the transaction, but a
13 9 transaction may not be authorized, approved, or ratified under
13 10 this section by a single director. If a majority of the
13 11 directors who have no direct or indirect interest in the
13 12 transaction vote to authorize, approve, or ratify the
13 13 transaction, a quorum is present for the purpose of taking
13 14 action under this subsection. The presence of, or a vote cast

13 15 by, a director with a direct or indirect interest in the
13 16 transaction does not affect the validity of any action taken
13 17 under this subsection, if the transaction is otherwise
13 18 authorized, approved, or ratified as provided in this
13 19 subsection.

13 20 b. The material facts of the transaction and the
13 21 director's interest were disclosed or known to the
13 22 shareholders entitled to vote and they authorized, approved,
13 23 or ratified the transaction. For purposes of this subsection,
13 24 a conflict of interest transaction is authorized, approved, or
13 25 ratified if it receives a majority of the votes entitled to be
13 26 counted under this subsection. Shares owned by or voted under
13 27 the control of a director who has a direct or indirect
13 28 interest in the transaction, and shares owned by or voted
13 29 under the control of an entity described in paragraph "a",
13 30 shall not be counted in a vote of members to determine whether
13 31 to authorize, approve, or ratify a conflict of interest
13 32 transaction under this subsection. The vote of those shares,
13 33 however, is counted in determining whether the transaction is
13 34 approved under other sections of this chapter. A majority of
13 35 the votes, whether or not the shareholders are present, that
14 1 are entitled to be counted in a vote on the transaction under
14 2 this subsection constitutes a quorum for the purpose of taking
14 3 action under this subsection.

14 4 c. The transaction was fair to the cooperative.

14 5 2. For purposes of this section, a director of the
14 6 cooperative has an indirect interest in a transaction if
14 7 either:

14 8 a. Another entity in which the director has a material
14 9 financial interest is a party to the transaction.

14 10 b. Another entity of which the director is a director,
14 11 officer, or trustee is a party to the transaction and the
14 12 transaction is or should be considered by the board.

14 13 Sec. 23. NEW SECTION. 502.405 OFFICERS.

14 14 A cooperative shall have officers described in its bylaws
14 15 or appointed by the board in accordance with the bylaws. The
14 16 bylaws or the board shall delegate to one of the officers
14 17 responsibility for preparing minutes of the directors' and
14 18 members' meetings and for authenticating records of the
14 19 cooperative. Each officer has the authority and shall perform
14 20 the duties set forth in the bylaws or, to the extent
14 21 consistent with the bylaws, the duties prescribed by the
14 22 board. The same individual may simultaneously hold more than
14 23 one office.

14 24 Sec. 24. NEW SECTION. 502.406 STANDARDS OF CONDUCT.

14 25 1. A director or officer shall discharge the director's or
14 26 officer's duties in conformity with all of the following:

14 27 a. In good faith.

14 28 b. With the care an ordinarily prudent person in a like
14 29 position would exercise under similar circumstances.

14 30 c. In a manner the director or officer reasonably believes
14 31 to be in the best interests of the cooperative.

14 32 2. In discharging duties by a director or officer, the
14 33 director or officer is entitled to rely on information,
14 34 opinions, reports, or statements, including financial
14 35 statements and other financial data, if prepared or presented
15 1 by any of the following:

15 2 a. One or more officers or employees of the cooperative
15 3 whom the director or officer reasonably believes to be
15 4 reliable and competent in the matters presented.

15 5 b. A person, including but not limited to a legal counsel
15 6 or public accountant, regarding a matter that the director or
15 7 officer reasonably believes is within the person's
15 8 professional or expert competence.

15 9 c. A committee of the board of which the director or
15 10 officer is not a member if the director or officer reasonably
15 11 believes the committee merits confidence.

15 12 3. A director or officer is not acting in good faith if
15 13 the director or officer has knowledge concerning a matter in
15 14 question that makes reliance otherwise permitted by subsection
15 15 2 unwarranted.

15 16 4. A director or officer is not liable for any action
15 17 taken as a director or officer, or the failure to take action,
15 18 if the director or officer performs the duties of the office
15 19 in compliance with this section, or if, and to the extent
15 20 that, liability for the action or failure to act has been
15 21 limited by the articles pursuant to section 501.407.

15 22 Sec. 25. NEW SECTION. 501.407 PERSONAL LIABILITY.

15 23 The articles may contain a provision eliminating or
15 24 limiting the personal liability of a director, officer, or a
15 25 shareholder of the cooperative for monetary damages for breach
15 26 of a fiduciary duty as a director, officer, or shareholder,
15 27 provided that the provision does not eliminate or limit
15 28 liability for any of the following:

15 29 1. A breach of the duty of loyalty to the cooperative or
15 30 its shareholders.

15 31 2. An act or omission not in good faith or which involves
15 32 intentional misconduct or a knowing violation of law.

15 33 3. A transaction from which the director, officer, or
15 34 shareholder derives an improper personal benefit.

15 35 4. An act or omission occurring prior to the date when the
16 1 provision in the articles becomes effective.

16 2 Sec. 26. NEW SECTION. 501.408 INDEMNIFICATION.

16 3 A cooperative may indemnify a present or former director,
16 4 officer, employee, or agent in the manner and in the instances
16 5 authorized in sections 490.850 through 490.858, provided that
16 6 where these sections provide for action by the shareholders
16 7 these sections are applicable to actions by the members, and
16 8 where these sections refer to the cooperative these sections
16 9 are applicable to a cooperative.

16 10 SUBCHAPTER V

16 11 CAPITAL STRUCTURE

16 12 Sec. 27. NEW SECTION. 501.501 ISSUANCE AND TRANSFER OF
16 13 STOCK.

16 14 1. A cooperative may issue the number of shares of each
16 15 class authorized by its articles. A cooperative may issue
16 16 fractional shares. Stock may be represented by certificates
16 17 or by entry on the cooperative's stock record books.

16 18 2. A member may sell or otherwise transfer stock to any
16 19 other member or to any person who has been approved by the
16 20 board for membership, subject to the limitations in the
16 21 articles or bylaws on the amount of each class of stock that
16 22 may be owned by one member.

16 23 3. A cooperative may acquire its own stock, and shares so
16 24 acquired constitute authorized but unissued shares.

16 25 Sec. 28. NEW SECTION. 501.502 TERMINATION OF MEMBERSHIP.

16 26 1. The articles or bylaws may authorize the board to
16 27 terminate a membership for any of the following reasons:

16 28 a. The member has attempted to transfer stock to a person
16 29 who is not a member and has not been approved for membership.

16 30 b. The member has failed to meet the member's commitment
16 31 to provide products to the cooperative or to buy the
16 32 cooperative's products.

16 33 c. The member is no longer an authorized person.

16 34 d. The member is no longer a farming entity.

16 35 2. A member's right to vote at member meetings shall cease
17 1 upon notification to the member of the board action. The
17 2 cooperative shall redeem, without interest, the voting stock
17 3 of a terminated member within two years after the termination
17 4 decision for the value set in the articles or bylaws.

17 5 Sec. 29. NEW SECTION. 501.503 DISTRIBUTION OF NET
17 6 SAVINGS.

17 7 The board shall annually dispose of the cooperative's
17 8 earnings in excess of its operating expenses as follows:

17 9 1. If the articles authorize the payment of dividends on a
17 10 class of stock, then the directors may declare dividends
17 11 pursuant to the articles. Dividends may not exceed eight
17 12 percent of the value of the stock in each fiscal year. The
17 13 members may control the amount that is allocated under this
17 14 subsection.

17 15 2. To provide a reasonable reserve for depreciation,
17 16 obsolescence, bad debts, or contingent losses or expenses.
17 17 The members may control the amount that is allocated under
17 18 this subsection.

17 19 3. To increase the cooperative's retained savings to the
17 20 extent determined by the board to be necessary based on its
17 21 evaluation of the future needs and the competitive position of
17 22 the cooperative.

17 23 4. The cooperative shall have an unconditional binding
17 24 obligation to distribute to the members all remaining net
17 25 savings as determined under the United States Internal Revenue
17 26 Code. These net savings shall be allocated to each member in
17 27 proportion to the business the member did with the cooperative
17 28 during the preceding fiscal year. The net savings may be
17 29 separately calculated for two or more categories of business,
17 30 and allocated to the members on the basis of business done
17 31 within each of these categories. Net savings shall be
17 32 distributed in the form of cash or stock, or a combination of
17 33 cash and stock, as determined by the board.

17 34 SUBCHAPTER VI

17 35 CONVERSION, MERGER, SALE, AND DISSOLUTION

18 1 Sec. 30. NEW SECTION. 501.601 EXISTING CORPORATIONS.

18 2 1. As used in this section:

18 3 a. "Dissenting member" means a voting member who votes in
18 4 opposition to the plan of conversion and who makes a demand
18 5 for payment as provided in this section not later than the
18 6 deadline for members to cast ballots on the vote to approve
18 7 the plan of conversion.

18 8 b. "Issue price" means the amount paid for an interest in
18 9 the association or the value stated in a notice of allocation
18 10 of patronage refunds.

18 11 2. An association organized under chapter 497, 498, or 499
18 12 may adopt this chapter pursuant to the following procedures:

18 13 a. The board must adopt a plan of conversion that
18 14 specifies the changes in the articles to comply with this
18 15 chapter, the affect of the conversion on the association's
18 16 outstanding members' equity, and the option or options
18 17 available to the equity holders who do not want to continue
18 18 their investment in the association.

18 19 b. The members must approve the plan of conversion by the
18 20 vote of two-thirds of the votes cast on a ballot in which a
18 21 majority of all votes are cast.

18 22 3. a. The cooperative shall redeem all of the members'
18 23 equity held by dissenting members at its issue price within
18 24 sixty days after the conversion to this chapter is effective.
18 25 At the time of redemption, the cooperative shall pay to each
18 26 dissenting member in cash the amount paid in cash by that
18 27 member for the member's interest in the old association. The
18 28 cooperative shall pay the remainder of the issue price without
18 29 interest in ten annual equal payments, with the final payment
18 30 being made not later than fifteen years after the conversion
18 31 becomes effective. The cooperative shall reflect the unpaid
18 32 portion as a liability in the records of the cooperative. The
18 33 cooperative shall pay the unpaid portion to the estate of a
18 34 dissenting member who is a natural person who dies before the
18 35 entire issue price has been paid with the same priority as if

19 1 the person was a member at the time of death.
19 2 b. An equity holder who is not a voting member shall have
19 3 the same rights as a dissenting member if the equity holder
19 4 makes a demand for payment pursuant to paragraph "a" not later
19 5 than the deadline for members to cast ballots on the vote to

19 6 approve the plan of conversion.

19 7 c. The association shall notify all equity holders of
19 8 their rights pursuant to paragraph "a" at the same time the
19 9 association notifies the members of the member meeting to vote
19 10 on the plan of conversion.

19 11 Sec. 31. NEW SECTION. 501.602 MERGER AND CONSOLIDATION.

19 12 A cooperative organized under this chapter may merge or
19 13 consolidate with one or more other cooperatives organized
19 14 under this chapter. The provisions of sections 499.61 through
19 15 499.70 shall apply to such a merger or consolidation.

19 16 Sec. 32. NEW SECTION. 501.603 SALE OF ASSETS.

19 17 1. A cooperative may, on the terms and conditions and for
19 18 the consideration determined by the board, mortgage, pledge,
19 19 or otherwise encumber any or all of its property.

19 20 2. A cooperative may sell, lease, exchange, or otherwise
19 21 dispose of all, or substantially all, of its property, with or
19 22 without the good will, on the terms and conditions and for the
19 23 consideration determined by the board, which consideration may
19 24 include the preferred stock of another cooperative, if the
19 25 board recommends the proposed transaction to the members, and
19 26 the members approve it by the vote of two-thirds of the votes
19 27 cast on a ballot in which a majority of all votes are cast.
19 28 The board may condition its submission of the proposed
19 29 transaction on any basis.

19 30 Sec. 33. NEW SECTION. 501.604 DISSOLUTION.

19 31 The provisions of sections 490.1401 through 490.1440 shall
19 32 apply to cooperatives in the same manner as they apply to
19 33 corporations organized under chapter 490.

19 34 EXPLANATION

19 35 This bill provides for the organization of cooperative
20 1 corporations which are eligible to hold agricultural land.

20 2 The bill provides for the organization of cooperative
20 3 corporations based in part on provisions contained in chapter
20 4 499, the chapter providing for the organization of cooperative
20 5 associations, and chapter 490, the chapter providing for the
20 6 organization of corporations. The bill provides as follows:

20 7 Section 203.1 defines a grain dealer for purposes of
20 8 chapter 203, the grain dealers law. The bill amends the
20 9 definition to exclude a cooperative corporation organized
20 10 under chapter 501, if the cooperative does not buy grain from
20 11 producers who are not members and does not sell any grain.

20 12 Section 501.101 provides definitions, including a
20 13 definition of "authorized person" to mean a farming entity, an
20 14 individual or general partnership that owns land and receives
20 15 as rent a share of the crops or the animals raised on the
20 16 land, or an employee of the cooperative who performs at least
20 17 1,000 hours of service for the cooperative in a calendar year.
20 18 A "farming entity" is defined to mean a natural person or a
20 19 fiduciary for a natural person who regularly participates in
20 20 physical labor or management in a farming operation; a family
20 21 farm corporation, family farm limited liability company,
20 22 family farm limited partnership, or family trust, as defined
20 23 in Iowa's corporate farming law; or a general partnership,
20 24 limited partnership, or limited liability partnership composed
20 25 exclusively of natural persons or persons acting in a
20 26 fiduciary capacity for the benefit of natural persons, which
20 27 has received at least 60 percent of gross income over the last
20 28 consecutive three-year period from farming.

20 29 Section 501.102 provides that a cooperative organized under
20 30 the chapter may have any purpose so long as it is lawful, and
20 31 may have perpetual duration, and has the same general powers
20 32 as provided to corporations organized under chapter 490.

20 33 Section 501.103 provides that a cooperative may, directly
20 34 or indirectly, acquire or otherwise obtain or lease
20 35 agricultural land in this state for as long as farming
21 1 entities own a majority of the stock and are eligible to cast
21 2 a majority of the votes at member meetings, and authorized

21 3 persons own at least three-fourths of the stock and are
21 4 eligible to cast at least three-fourths of the votes at member
21 5 meetings. The cooperative claiming that it is exempt from the
21 6 restrictions of section 9H.4 must file an annual report with
21 7 the secretary of state on or before March 31. The report must
21 8 include information relating to the cooperative and its land
21 9 holdings. The section provides that an officer who falsifies
21 10 a report is guilty of perjury which is punishable as class "D"
21 11 felony. The section provides that a cooperative is prohibited
21 12 from holding more than 1,500 acres of agricultural land.

21 13 Section 501.104 provides that the name of the cooperative
21 14 must identify it as a cooperative.

21 15 Section 501.105 provides for the execution and filing of
21 16 documents, including providing for standard forms by the
21 17 secretary of state, the execution and filing of cooperative
21 18 documents, including the payment of filing fees, and
21 19 corrective documents.

21 20 Section 501.106 provides that the cooperative must maintain
21 21 a registered office and an agent in the state.

21 22 Section 501.107 provides that a cooperative must provide
21 23 for records and reports as does a corporation organized
21 24 pursuant to chapter 490.

21 25 Section 501.108 provides that the attorney general alone
21 26 has the right to inquire into whether a cooperative has the
21 27 right to exist or continue under chapter 501. The attorney
21 28 general is provided the authority to bring an action to wind
21 29 up the affairs of a cooperative not functioning as provided in
21 30 the bill.

21 31 Section 501.201 provides for the incorporation of the
21 32 cooperative by three or more individuals.

21 33 Section 501.202 provides for filing the initial articles of
21 34 incorporation, including specific information that must be
21 35 included in the articles.

22 1 Section 501.203 provides for amending and restating the
22 2 articles of incorporation. The bill provides that a
22 3 cooperative may amend its articles at any time to add or
22 4 change a provision that is required or permitted in the
22 5 articles or to delete a provision not required in the
22 6 articles, or to restate its articles at any time. The
22 7 amendment or restatement must be adopted by the members by a
22 8 vote of two-thirds.

22 9 Section 501.204 provides for the cooperative's bylaws. The
22 10 bill provides that the board or members may adopt or amend the
22 11 cooperative's bylaws by a vote of three-fourths of the board.

22 12 Section 501.301 provides that a member is not personally
22 13 liable for the acts or debts of the cooperative.

22 14 Section 501.302 provides procedures for calling and holding
22 15 meetings, including providing for annual and special meetings.
22 16 The bill provides for notice to members, and determining
22 17 whether members are entitled to vote.

22 18 Section 501.303 provides for the conduct of meetings. The
22 19 bill provides for member voting, including absentee voting.

22 20 Section 501.304 provides for the distribution of
22 21 information to members of the cooperative.

22 22 Section 502.401 provides for the management of a
22 23 cooperative by a board of directors, which is elected and
22 24 serves terms as prescribed in the articles or bylaws.

22 25 Section 502.402 provides for vacancies occurring on the
22 26 board, including by resignation and removal, and for filling
22 27 vacancies by the board or as otherwise provided by the
22 28 articles of incorporation or bylaws.

22 29 Section 502.403 provides for board action, including
22 30 providing for quorum requirements, regular board meetings,
22 31 special board meetings, the establishment of committees, the
22 32 conduct of meetings, and action that may be taken without a
22 33 meeting.

22 34 Section 502.404 provides for resolving conflicts of

22 35 interest. The bill provides that if a conflict occurs, the
23 1 board may take action if the conflict was known to other board
23 2 members and the members without a conflict approve the
23 3 measure, or the transaction is fair to the cooperative.
23 4 Section 502.405 provides that the cooperative must
23 5 establish officers and their duties.
23 6 Section 502.406 provides that a director or officer must
23 7 discharge duties in good faith, with the care of an ordinarily
23 8 prudent person, and in the best interests of the cooperative.
23 9 The bill provides that the director or officer is entitled to
23 10 rely on information prepared by reliable sources. A director
23 11 or officer who performs duties as required under the section
23 12 cannot be held liable for an action or a failure to act.
23 13 Section 501.407 provides that the articles of incorporation
23 14 may contain a provision eliminating or limiting the personal
23 15 liability of a director or officer or its shareholders. The
23 16 bill provides that the section does not apply to a breach of
23 17 the duty of loyalty, an act or omission made in bad faith or
23 18 misconduct, an action which constitutes improper enrichment,
23 19 or an act or omission occurring prior to the date when the
23 20 provision excusing the conduct becomes effective.
23 21 Section 501.408 provides that a cooperative may indemnify a
23 22 present or former director, officer, employee, or agent.
23 23 Section 501.501 provides for the issuance and transfer of
23 24 stock, including the issuance of different classes of stock,
23 25 and fractional shares. The bill provides that a member may
23 26 sell or otherwise transfer stock to any other member or to any
23 27 person who has been approved by the board for membership.
23 28 Section 501.502 provides for the termination of membership
23 29 by the articles of incorporation or bylaws. The bill provides
23 30 for termination if a member transfers stock to a person who is
23 31 not a member and has not been approved for membership, the
23 32 member fails to meet the member's commitment to provide
23 33 products to the cooperative or to buy the cooperative's
23 34 products, or the member is no longer an authorized person or a
23 35 farming entity. The bill provides for the redemption of the
24 1 terminated member's stock.
24 2 Section 501.503 provides for the distribution of the
24 3 cooperative's net earnings. The bill provides that the board
24 4 must annually dispose of the cooperative's earnings in excess
24 5 of its operating expenses, including the payment of dividends,
24 6 the reserve for depreciation, and to increase the
24 7 cooperative's retained savings. The bill provides that a
24 8 cooperative has an unconditional binding obligation to
24 9 distribute to the members all remaining net savings as
24 10 determined under the United States Internal Revenue Code.
24 11 Section 501.601 provides for conversion, including a demand
24 12 for payment for a member who votes in opposition to the plan
24 13 of conversion. The bill provides that a cooperative
24 14 association may convert to an organization under this chapter.
24 15 The bill provides that the board and the members must approve
24 16 the plan of conversion.
24 17 Section 501.602 provides that a cooperative may merge or
24 18 consolidate with one or more other cooperatives organized
24 19 under chapter 501. The bill provides that sections relating
24 20 to mergers applicable to cooperative associations as provided
24 21 in sections 499.61 through 499.70 apply to a merger or
24 22 consolidation under chapter 501.
24 23 Section 501.603 provides for the sale of a cooperative's
24 24 assets. The bill provides that a cooperative may mortgage,
24 25 pledge, encumber, sell, lease, exchange, or otherwise dispose
24 26 of its property as determined by the board. If a cooperative
24 27 disposes of all of its property, the members must approve it
24 28 by the vote of two-thirds.
24 29 Section 501.604 provides for the dissolution of the
24 30 cooperative in the same manner as provided for a corporation
24 31 in sections 490.1401 through 490.1440.

24 32 LSB 3663HC 76
24 33 da/cf/24.1