

BILL ANALYSIS

C.S.H.B. 2671
By: Swinford
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Throughout Texas, agricultural cooperatives provide for the efficient processing and marketing of agricultural products, and support individuals and businesses involved in agriculture. However, do to the limits in existing law, cooperatives are currently experiencing difficulty in attaining the necessary capital in order to invest and expand. Several other states such as Wyoming, Minnesota, Wisconsin, Iowa and Tennessee, were experiencing difficulties very similar to the situation in Texas. Those respective states enacted legislation allowing for a restructuring of agricultural cooperatives into limited agricultural cooperatives that are similar to limited liability corporations.

In Texas, a similar addition to the law would also greatly benefit existing cooperatives if they choose to convert, as well as those who may be considering creating a new cooperative. C.S.H.B. 2671 will create a new chapter in the Agricultural Code to establish the limited agricultural cooperative. These cooperatives will allow for outside investment by the non-farmer patron. This new cooperative classification will be completely optional and will have no effect on existing cooperatives. Establishing limited agricultural cooperatives will allow for more outside investment for the cooperative than a traditional limited liability corporation and help to keep cooperatives in Texas operating effectively and efficiently.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Secretary of State in Section 1 of this bill.

ANALYSIS

SECTION 1. Adds Chapter 53 to Title 4 of the Agriculture Code.

CHAPTER 53. LIMITED AGRICULTURAL COOPERATIVES.

SUBCHAPTER A. GENERAL PROVISIONS.

Sec. 53.001. SHORT TITLE. Provides that the name of this Act is the Limited Agricultural Cooperatives Act.

Sec. 53.002. DEFINITIONS. Provides definitions for address, articles of organization, association, board, business entity, cooperative, domestic business entity, foreign business entity, governing documents, jurisdiction, member, membership interest, members' meeting, merger, nonpatron membership interest, patron, patronage, patron member, and patron membership interest.

Sec. 53.003. Provides that the provisions of Title 1, Business Organizations Code, applies to a cooperative in the same manner as if the it was a limited liability company.

Sec. 53.004. Provides that the secretary of state may issue fees for various filings that are filed with the secretary of state's office.

Sec. 53.005-53.050. Reserved for expansion.

SUBCHAPTER B. PURPOSE AND POWERS.

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Sec. 53.051. ORGANIZATIONAL PURPOSE. Provides that the organizational purpose of a limited cooperative is to market, process, or otherwise change the form or marketability of agricultural products, including manufacturing and other purposes.

Sec. 53.052. POWERS. (a) Provides that in addition to other powers, a cooperative may do what is necessary to conduct business and accomplish the purposes of the cooperative, has the rights powers, or privileges granted to a domestic entity under Chapter 2, Business Organizations Code, except what is inconsistent with this chapter, and has the powers provided by this section.

(b) Provides that a cooperative may buy, sell, negotiate prices, and deal in its own products and the products of the cooperative's members, patrons or nonmembers, as well as the products of another cooperative or its members or patrons and products of another person or entity.

(c) Provides that a cooperative may enter into contracts.

(d) Provides that a cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange, or convey real or personal property as needed.

(e) Provides that a cooperative may erect buildings.

(f) Provides that the cooperative may issue bonds and borrow money.

(g) Provides that a cooperative may make advances to members or patrons.

(h) Provides that a cooperative may accept deposits.

(i) Provides that a cooperative may extend trade credit to or borrow from members, cooperatives, or associations and may give sufficient security.

(j) Provides that a cooperative may with full rights purchase, acquire, hold, or dispose of another business entity.

(k) Provides that a cooperative may acquire or hold an ownership interest in another business entity, including a federation of associations; a business entity organized for the purpose of forming a district, state, or national marketing, sales, or service agency; or for the purposes of acquiring marketing facilities.

(l) Provides that a cooperative may purchase, own, and hold ownership interests, memberships, interests in nonstick capital, or evidences of indebtedness of another business entity.

(m) Provides that a cooperative may exercise fiduciary powers.

(n) Provides that a cooperative may take, receive, and hold real and personal property in trust.

(o) Provides that a cooperative may not act as a credit union, bank, trust company, savings bank, or savings association regulated under that Finance Code.

Sec. 53.053. AGRICULTURAL PRODUCT MARKETING CONTRACTS. (a) Provides that a cooperative and its patron member or patron may make and execute a marketing contract to sell agricultural products or commodities.

(b) Provides that title to a product is transferred to the cooperative by a marketing contract, subject to preexisting liens or security interests. The contract may also provide for the sale of product without the cooperative taking title.

(c) Provides that the term of a marketing contract may not exceed ten years, but may be made self-renewing for subsequent five year periods.

(d) Provides for liquidated damages.

(e) Provides that the cooperative may seek an injunction and/or temporary restraining order and/or preliminary injunction to prevent a breach of a marketing contract.

(f) Provides that a person commits a misdemeanor by inducing breach of a marketing contract or spreading false reports and that the offense may be punishable by a fine of no less than \$100 and not to exceed \$1,000.

(g) Provides that a person may be subject to civil action for inducing a breach of a marketing contract or spreading false reports.

Sec. 53.054. DISTRIBUTION OF UNCLAIMED PROPERTY. (a) Provides that a cooperative may distribute unclaimed property to a corporation or organization that is exempt from federal income taxation, so long as the cooperative files a report containing a written explanation, any error in the presumption of abandonment; the corporation or organization to which the property is to be distributed; and the date of distribution with the comptroller.

(b) Provides that this section does not alter the cooperative's duty to comply with other laws relating to unclaimed property.

(c) Provides that owner's entitlement to unclaimed property is extinguished by distribution.

Sec. 53.055 - Sec. 53.100 reserved for expansion.

SUBCHAPTER C. FILINGS

Sec. 53.101. WHEN FILINGS TAKE EFFECT. (a) States that except as provides by (b) or otherwise provided by the chapter, a filing instrument submitted to the secretary of state takes effect when filed.

(b) Provides that the date and time at which the filing instrument takes effect may be delayed by Subchapter B, Chapter 4, Business Organizations Code.

Sec. 53.102. ABANDONMENT BEFORE EFFECTIVENESS. Provides that the parties to a filing instrument may abandon the instrument if the instrument has not taken effect by filing a certificate of abandonment in accordance with Section 4.057, Business and Organizations Code.

Sec. 53.103. CORRECTING AN ERRONEOUS OR DEFECTIVE INSTRUMENT. (a) Provides that a cooperative may in accordance with Subchapter C, Chapter 4, Business Organizations Code, file a certificate of correction to correct an inaccurate filing instrument that has been filed with the secretary of state.

(b) Provides that a certificate of correction must be signed by a director or authorized officer of the cooperative.

(c) Provides that except for (d) when the certificate of correction is filed by the secretary of state the filing instrument is considered to be corrected on the date the instrument was originally filed.

(d) Provides that in an instance in which a person is negatively affected by the correction of the filing instrument, the correction is considered to have been made on the date the correction is filed.

(e) Provides that a certificate issued by the secretary of state before a filing instrument is corrected applies to the corrected filing instrument as of the date the corrected filing instrument is considered to have been filed under this section.

Sec. 53.104. SIGNATURE AND GENERAL FILING REQUIREMENTS. (a) States that unless otherwise provided, a filing instrument submitted on behalf of the cooperative must be signed by an authorized officer.

(b) Provides that if the cooperative is under the control of a receiver, trustee or other court appointed fiduciary, the filing instrument must be signed in by that fiduciary.

(c) Provides that a person who is authorized to sign a filing instrument is not required to show evidence of the authorization.

(d) Provides that a photographic, photostatic, facsimile, electronic, or similar reproduction of a filing instrument, signature, acknowledgement of filing, certificate or communication may be filed or issued in place of (1) an original filing instrument, (2) an original signature, (3) an original certificate or acknowledgement of filing.

(e) Provides that to be accepted by the secretary of state a filing instrument must satisfy the filing requirements of the chapter, the requirements of any other law made applicable to filing instruments and any administrative rule adopted by the secretary of state.

(f) Provides that if the secretary of state finds that all the filing requirements are met and the fees have been paid, the secretary shall (1) file the instrument by accepting it into the filing system adopted by the secretary and assign a date of the filing; and(2) deliver a written acknowledgement or certificate evidencing filing to the cooperative or its representative.

(g) Provides that if a duplicate copy is filed with the secretary of state, the secretary shall endorse the duplicate copy with the word "filed" on it and return the copy with written acknowledgement evidencing the filing.

Sec. 53.105. APPEALS FROM SECRETARY OF STATE'S REFUSAL TO FILE INSTRUMENT. A person may appeal the secretary disapproval of the filing of an instrument as provided by Section 12.004, Business Organizations Code.

Sec. 53.106 PENALTY FOR SUBMISSION OF A FALSE OR FRAUDULENT INSTRUMENT. Provides Section 4.008, Business Organizations Code, applies to a filing under this chapter.

Sec. 53.107. SECRETARY OF STATE; DUTIES and AUTHORITY. (a) Provides that the duty of the secretary to file instruments is ministerial.

(b) Provides that the secretary of state may adopt rules for filing of instruments under authorized to be filed with the secretary of state under this chapter.

(c) Provides that the secretary may adopt forms for filing instruments.

(d) Provides that the secretary has the power and authority reasonably necessary to perform the duties imposed by this chapter.

Sections 53.108-53.150 reserved for expansion

SUBCHAPTER D. ORGANIZATION

Sec. 53.151. ORGANIZERS. (a) Provides for one or more organizers of a cooperative.

Sec. 53.152. Provides that a cooperative's name must comply with Subchapters A and B, Chapter 5, Business Organizations Code, in the manner required of a domestic filing entity.

(b) Provides that a cooperative may conduct business under a different name if it files an assumed name certificate in accordance with Chapter 36, Business Organizations Code.

(c) Provides that a cooperative's name may not infringe on the rights of another person under (1) The Trademark Act of 1946, as amended (15 U.S.C. Section 1051 et seq.), (2) Chapter 16 or 36, Business and Commerce Code, (3) or common law.

Sec. 53.103. ARTICLES OF ORGANIZATION. (a) Provides that the articles of organization must include the name and purpose of the cooperative, the cooperative's principal place of

business, the duration of the cooperative if not perpetual, the capital structure of the cooperative and a statement on member interests, a provision designating voting and governance rights and a statement on any limitation or restriction on voting power, a statement describing that a patron membership interest receives one vote or the chosen allocation of voting power, a statement regarding the transfer of a membership interest, the initial board, a statement of profit and loss allocation, a statement on net income allocation, and the address of the cooperative, and the address of the cooperative's initial registered office and name of the cooperative's agent.

- (b) Provides that the articles must indicate if the cooperative is being formed under a plan of conversion or a plan of merger.
- (c) Provides that the articles shall contain provisions described by (a) and (b) except that personal information of the directors may be omitted after their successors have been installed.
- (d) Provides that the articles may contain any other lawful provision and are not required to state any of the powers provided under this chapter.
- (e) Provides that the articles must be signed by the organizers.
- (f) Provides that articles of organization must be filed with the secretary of state and if the secretary deems the articles meet the requirements, the secretary shall issue a certificate of organization.
- (g) Provides that when the articles of organization are filed with the secretary of state, there is a presumption that conditions precedent have been met, the cooperative is a separate legal entity, and the secretary of state will issue a certificate of organization.

Sec. 53.154. AMENDMENT OF ARTICLES OF ORGANIZATION. (a) Provides that the articles of organization may be amended by the board passing a resolution and then mailing the amendment to members with a meeting notice, and provides that the amendment is adopted when approved by the majority or the proportion of members required by the articles of organization or bylaws.

- (b) Provides that after an amendment to the articles has been adopted, the cooperative shall file with the secretary of state articles of amendment signed by the chair, vice chair, records officer, or assistant records officer and the articles must state the name of the cooperative, identify each provision being added or altered, provide that text of each section being added or altered, and include a statement that each amendment was approved in the manner required.
- (c) Provides that a certificate shall be prepared regarding the adoption of the amendment.
- (d) Provides that the certificate shall be signed and filed with the records of the cooperative.
- (e) Provides that the board may amend the articles of organization if the cooperative does not have any members with voting rights.

Sec. 53.155. RESTATED ARTICLES OF ORGANIZATION (a) Provides that a cooperative may file restated articles of organization using the procedures outlined in this chapter.

- (b) Provides that member approval is not required to file or restated articles of organizations.
- (c) Provides that restated articles must be signed by an authorized officer in accordance with Section 3.059, Business Organizations Code.
- (d) Provides that the restated articles may omit the personal info of each organizer and may replace them with the current directors.

Sec. 53.156. CONVERSION OF AN EXISTING ASSOCIATION TO BE GOVERNED BY THIS CHAPTER. (a) Provides that an existing association that is incorporated is authorized to convert and become subject to the provisions of this chapter by adopting a plan of conversion.

(b) Provides that the members may approve a plan of merger, if the governing documents do not provide for a method of merger.

(c) Provides that a plan of conversion must include the name of the association that is the converting entity, the name of the cooperative that is the converting entity, a statement that the converting entity is continuing its existence as a cooperative, the proposed effect of the conversion on the members and patron members of the converting entity, the manner and basis of converting, the articles of organization.

(d) Provides that a plan of conversion may include any other provision allowed by law.

(e) Provides that upon approval of the plan of conversion a certificate of conversion must be filed with the secretary of state to be effective. The certificate must include a statement certifying the name, entity type, and jurisdiction of the converting entity, the name of the cooperative that is the converted entity, that the converting entity is continuing its existence as a cooperative, that a signed plan of conversion is on file at the principal place of business of the converting entity, that a signed plan must also be on file at the converted entity, that a copy of the plan will be furnished to any member of the converting or converted entity by the converting entity before the conversion and by the converted entity before the conversion, and a statement that the plan of conversion has approved as required by law, the articles of organization of the cooperative that is to be formed under the plan.

(f) Provides that when a conversion takes effect, each member of the converting association has a membership interest but this does not apply to a member who receives payment for the person's interest and a person who agrees to an alternative disposition of the person's interest.

(g) Provides that an association may not convert if a member would become personally liable for a liability with the member's consent.

(h) Provides that when the conversion takes effect, the converting entity continues to exist without interruption as a cooperative, each right or title to an interest in property owned by the converting entity continues to be owned by the cooperative without any reversion or impairment, further act or deed or any transfer or assignment having occurred; each liability or obligation continues to be a liability or obligation of the cooperative, the rights of creditors or other parties continue to exist and may be enforced, a proceeding pending may be continued, the membership interests of the converting entity become the membership interest of the converted entity, and that if a member of the converted entity is liable after conversion the person is liable for the liabilities and obligations that existed before the conversion only to the extent that the person agrees in writing to be liable for the liabilities, was liable before the conversion, or becomes liable under other applicable law.

Sec. 53.157. CONVERSION OF AN EXISTING BUSINESS ENTITY TO BE GOVERNED BY THIS CHAPTER (a) Provides that a business entity other than described in Section 53.156 may convert to a cooperative as provided by Section 53.156.

(b) Provides that to effect the conversion a business entity must take any action that may be required under the laws of the entity's jurisdiction of formation.

(c) Provides that the conversion must be permitted by the law under which the business entity is incorporated or organized or by its governing documents.

Sec. 53.158. EXISTENCE (a) Provides that the existence of a cooperative begins when the articles are filed as provided by this chapter.

(b) Provides that a cooperative has perpetual duration unless the articles of organization provide for a limited period of duration.

Sec. 53.159. REGISTERED AGENT; CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. (a) Provides that cooperative must maintain a registered office and registered agent.

(b) Provides that a cooperative may change its registered office or agent on filing with the secretary of state that includes the name of the cooperative, the current address, the new address, the name of the current agent, the name of the new agent if there is one, a certification verifying that the addresses of the registered office and business office are identical, a certification that the changes were authorized by the board of directors.

(c) Provides that the statement authorized in (b) shall be signed and delivered to the secretary of state and that the changes are effective when filed by the secretary.

(d) Provides that a registered agent may resign as prescribed by Section 5.204, Business Organizations Code.

(e) Provides that a cooperative may change its name or address by filing a statement of change in accordance with Section 5.203 Business Organizations Code.

Sec 53.160. FAILURE TO MAINTAIN REGISTERED AGENT OR REGISTERED OFFICE; INVOLUNTARY DISSOLUTION AND REINSTATEMENT. (a) Provides that if the secretary of state determines that a cooperative has failed to maintain a registered agent, the secretary may notify the cooperative.

(b) Provides that the secretary of state may dissolve a cooperative anytime after the 90th day which notice was given if the cooperative failed to maintain a registered agent.

(c) Provides that if the secretary of state involuntarily dissolves a cooperative the secretary shall issue a certificate of the involuntary dissolution and deliver the certificate to the cooperative.

(d) Provides that the certificate of involuntary dissolution must state that the cooperative has been involuntarily dissolved and the date of and reason for the involuntary dissolution.

(e) Provides the cooperative is dissolved unless otherwise provided by this section.

(f) Provides that a cooperative may be reinstated as prescribed by Section 11.253, Business Organizations Code and the entity files a statement of change of registered agent or office or the secretary of state finds that the circumstances that led to the dissolution did not exist at the time of termination.

(g) Provides that the Secretary of State may not reinstate a cooperative if the name is the same or deceptively similar to an existing cooperative.

(h) Provides that Sec 11.253 (d), Business Organizations Code, applies to a cooperative that is reinstated under (f) to the same extent it applies to a filing under Section 11.253, Business Organizations Code.

Sec. 53.161 - Sec. 53.200 reserved for expansion.

SUBCHAPTER E. BYLAWS

Sec. 53.201. BYLAWS. (a) Provides for the adoption of bylaws.

(b) Provides for the adoption and/or amendment of bylaws following notice and if a quorum is present and with majority approval, or other approval as specified by the articles of organization or bylaws.

(c) Provides for the limited amendment of bylaws by directors.

(d) Provides that the content of bylaws may be any lawful provision and must include provisions relating to the board of directors, qualifications and number of members, admission, withdrawal, suspension, and expulsion of members, and rights, privileges and obligations of members, which are also to be described in a member control agreement.

Sec. 53.202 - Sec. 53.250 reserved for expansion.

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SUBCHAPTER F. MEMBERSHIP INTERESTS

Sec. 53.251. INTERESTS. (a) Provides for the increase or decrease of membership interests.

(b) Provides for the issuance of membership interests, and for disclosure of the organization, capital structure, and business prospects, risks, and governance of the cooperative to membership interests; also provides for the disclosure of financial rights of membership interest and other membership interests. Provides that a membership interest may not be issued until it has been paid for.

(c) Provides that patron membership interests may have at least fifteen percent right to profits.

(d) Provides that after issuance, a membership interest may be sold or transferred only with the approval of the board.

(e) Provides that a cooperative may solicit and issue nonpatron membership interests on terms determined by the board, and disclosed in the articles of organization, bylaws, or by separate disclosure to the members and the nonpatron member must sign a member control agreement.

(f) Provides that cooperative or the patron members have the first privilege to purchase the membership interest of any class of patron member's membership interest offered for sale. Also, provides that any patron membership acquired by the cooperative may be held and reissued or may be retired and cancelled.

(g) Provides that subject to the bylaws of the cooperative, a member may dissent from and obtain payment for the fair value of the member's nonpatron membership interest in the cooperative if the articles of organization or bylaws are amended in a manner that materially and adversely affects the rights and preferences of the nonpatron membership interest of the dissenting member.

Sec. 53.252. ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS. (a) Provides that the bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and other membership interests.

(b) Provides that the bylaws shall prescribe the distribution of cash or other assets of the cooperative among membership interests of the cooperative.

Sec. 53.253. ALLOCATIONS AND DISTRIBUTIONS TO PATRON MEMBERS. (a) Provides that the board may set aside a portion of the net income allocated to the patron membership interests to create or maintain a capital reserve.

(b) Provides that in addition to capital reserve, the board may (1) set aside an amount not to exceed five percent of the annual net income for promoting and encouraging the cooperatives and may (2) establish and accumulate reserves for the cooperative.

(c) Provides that net income allocated to patron members that exceeds dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage.

(d) Provides that the distribution of net income may be distributed at least annually.

(e) Provides the methods a cooperative may use to distribute net income to patron members.

(f) Provides that in its bylaws a cooperative may allow nonmember patrons to participate in the distribution of net income on equal terms with patron members.

(g) Provides that if a nonmember patron with patronage credits is not qualified or eligible for membership, a refund owed may be credited to the patron's individual account.

Sec. 53.254 - 53.300 reserved for expansion.

SUBCHAPTER G. MEMBERS

Sec. 53.301. GROUPING OF MEMBERS. (a) Provides that cooperatives may group members and patron members as articles of organization stipulates.

(b) Provides that the board may do what is necessary to implement the groups allowed for in (a).

Sec. 53.302. MEMBER VIOLATIONS; LIABILITY FOR COOPERATIVE DEBTS. (a) Provides that certain violations of the articles of organization, bylaws or other agreements may subject the member to surrendering the financial right of membership interest of any class owned by the member.

(b) Provides for the refund of the surrendered financial right of membership.

(c) Provides for the re-issuance or retirement of the surrendered membership interest.

(d) Provides that a member who violates these provisions may be required to surrender the member's entitlement to vote in the cooperative.

(e) Provides that a member is not personally liable for the cooperative.

Sec. 53.303. REGULAR MEMBERS' MEETINGS. (a) Provides that regular meetings may be held as determined by the board.

(b) Provides that the meetings shall be held at the principal place of meeting.

(c) Provides that officers shall submit reports to the members about the performance of the cooperative.

(d) Provides that directors shall be elected at the meetings.

(e) Provides that notices of the meeting shall be issued at specified times.

Sec. 53.304. SPECIAL MEMBERS' MEETINGS. (a) Provides that a special members meeting may be called by (1) a majority vote of the board or by (2) written petition submitted from various members.

(b) Provides that the cooperative shall issue notice of the special members' meeting within a specified time.

Sec. 53.305. CERTIFICATION OF MEETING NOTICE. (a) Provides that the chair or records officer shall execute a certificate that certifies the facts regarding the meeting notice.

(b) Provides that the certificate shall be made part of the record of the meeting.

Sec. 53.306. FAILURE TO RECEIVE MEETING NOTICE. (a) Provides that failure for a member to receive notice of a meeting does not invalidate an action taken during the meeting.

Sec. 53.307. QUORUM (a) Provides for the requirements for a quorum to be present.

(b) Provides for the allowance of a mail vote or other alternative voting method and that member registration at a meeting shall be verified by the chair or records officer and reported in the minutes.

(c) Provides that actions taken without a quorum are invalid.

Sec. 53.308. MEMBER VOTING RIGHTS. (a) Provides that a patron member is entitled to one vote except where a patron member is entitled to more than one vote.

(b) Provides that a member or delegate may exercise the member's voting right on any matter.

(c) Provides that a member's vote must be in person, by mail or by an alternative method previously approved.

(d) Provides that a cooperative may allow a unit or district of members to vote as one group represented by delegates.

(e) Provides that a member who will be absent may vote by mail or an approved alternative voting method.

(f) Provides the requirements for the ballot to be used by mail or other alternative voting methods.

Sec. 53.309. PATRON MEMBER VOTING IN COOPERATIVES CONSTITUTED ENTIRELY OR PARTIALLY OF OTHER COOPERATIVES OR ASSOCIATIONS. (a)

Provides that a cooperative that is constituted wholly or partly of other cooperatives or associations may authorize the patron members of a subsidiary cooperative to have an additional vote under specified circumstances.

(b) Provides that the articles of organization or the bylaws of a cooperative that is organized into units or districts of patron members may authorize the delegates elected by its patron members to have an additional vote or votes under specified circumstances.

Sec. 53.310 - 53.350 reserved for expansion.

SUBCHAPTER H. ADMINISTRATION

Sec. 53.351. GOVERNANCE. (a) Provides that a cooperative is governed by its board.

Sec 53.352. NUMBER OF DIRECTORS. Provides that a board must have at least three directors.

Sec. 53.353. ELECTION OF DIRECTORS. (a) Provides that members are elected in a manner provided by this section or the bylaws and that a majority of the directors must be members.

(b) Provides that directors are elected for the terms of office prescribed by the bylaws.

(c) Provides that cooperatives with districts or other units may elect members on a district or unit basis, if allowed by the bylaws.

(d) Provides that a member must vote in person for a director unless an alternative method is authorized.

(e) Provides the requirements for the alternative voting method for directors if it is so authorized.

(f) Provides that if a member is not a natural person and the bylaws do not provide otherwise, the member may nominate one or more natural persons for election to the board.

Sec. 53.354. FILLING VACANCIES. Makes provisions for filling vacancies on the board of directors.

Sec. 53.355. REMOVAL OF DIRECTORS. Provides that members may remove a board member at a member's meeting.

Sec. 53.356. LIMITATION OF DIRECTOR'S LIABILITY. (a) Provides limitations for a director's personal liability.

(b) Provides for exceptions to director's personal liability exception including; breach of duty or loyalty to the cooperative, and act or omission that is not in good faith, a transaction from which the director derived an improper personal benefit, or an act or omission that occurred before provisions that limited a director's personal liability.

Sec. 53.357. OFFICERS. (a) Provides that the board shall (1) elect a chair and one or more vice chairs and (2) elect or appoint a records officer and a financial officer.

(b) Provides for the election of additional officers as needed.

(c) Provides for the allowance of combining the office of records officer and financial officers.

(d) Requires that the chair and first vice chair must be directors and members but that all other officers are not required to be members.

(e) Allows for the employment of a chief executive officer.

(f) Provides that at a meeting the members may remove an officer other than chief executive officer and fill such vacancy.

Sec. 53.358. VOTE OF OWNERSHIP INTERESTS HELD BY COOPERATIVE. Provides that a cooperative that holds ownership interest in another business entity may elect to appoint a member to represent the cooperative at a meeting of the business entity.

Sec. 53.359 - 53.400 reserved for expansion

SUBCHAPTER I. MERGER AND CONVERSION

Sec. 53.401. MERGER. (a) Provides that cooperatives may merge or consolidate with other cooperatives or business entities.

(b) Provides that for a merger to occur a written plan of merger must be prepared by the board or a select committee and the plan must contain the name, organizational form and jurisdiction of formation of the constituent cooperatives and other business entities, the name of each surviving cooperative or other business entity created by the plan, the manner and basis of converting membership interests, the terms of the merger, the proposed effect of the merger on member and patron members, for a merger that creates a new entity, the articles of organization or applicable documents of each entity to be filed with the state in which the entity is organized and any amendments made to the articles of organization of the surviving cooperative or business entity.

(c) Provides that if more than one business entity survives, the merger plan must include the manner and basis of allocating and vesting the property of each entity that is a party to the merger, the name of each surviving or new business entity, and the manner and basis of allocating each liability and obligation of each business entity.

Sec. 53.402. NOTICE. (a) Provides that the board shall mail a merger plan notice to all members that includes the text of the plan and the time and place of the meeting.

(b) Provides that a cooperative with more than 200 members may provide the notice in the same manner as the notice of a regular member's meeting.

Sec. 53.403. ADOPTION OF MERGER PLAN (a) Provides the requirements for the adoption of a plan of consolidation or merger.

(b) Provides that upon adoption, the plan or articles of merger must be filed with the secretary of state for the merger to take effect.

(c) Provides that the articles of merger must be signed by an officer or representative of each cooperative and business entity and must include the plan of merger or a certified statement permitted by Section 10.151, Business Organizations Code, a statement that the plan of merger has been approved as required by law, a statement that the approval of the members or owners of the business entity that is party to the plan of merger is not required if applicable.

(d) Provides that for a merger, the articles of organization of the surviving cooperative subject to this chapter are considered amended to the extent provided in the articles of merger.

(e) Except as provided by Section 53.101, the merger is effective when the articles of merger are filed in the office of secretary of state.

(f) Provides that if the plan of merger creates a new cooperative the articles of organization must be filed with the secretary of state.

(g) Provides that if the plan of merger creates a new domestic business entity, and is required to file a certificate of information that certificate must also be filed with the secretary of state.

Sec. 53.404. MERGER AUTHORIZED. (a) Provides that notwithstanding any other provision in law, an existing association incorporated under this code may merge with a cooperative governed by this chapter.

(b) Provides that notwithstanding any other provision in law, an existing association organized under law of this state, and organized under this code may merge with a cooperative governed by this chapter.

Sec. 53.405. EFFECT OF MERGER. (a) Provides that when a merger takes effect, that the separate existence of each entity merging other than the surviving entity, ceases to exist; all rights title and interest to all real or other property is allocated to and vested without any reversion or impairment, any further act or deed, any transfer or assignment having occurred; all existing liabilities and obligations are allocated to one or more of the surviving new entities; each surviving or new domestic entity is the primary obligor for the liability or obligation and that no other party is liable or obligated; a proceeding that is pending by or against may be continued as if the merger did not occur; the articles of organization and bylaws of each surviving cooperative and the governing documents of each surviving business entity shall be amended according to the plan of merger; each new cooperative that has articles of organization of which are included in Section 53.403 is formed as a cooperative under this chapter; each new business entity the organizational documents of which are included in the plan of merger is formed when an executed copy of the articles of merger is delivered to or filed with the governmental entity; the ownership or membership interests of cooperative or business entity that is party to the merger that is to be converted or exchanged are converted and exchanged; and notwithstanding Subdivision (4), the surviving or new entity being primarily obligated to pay under Section 53.401 (c) is the primary obligor for that payment and all other surviving or new entities are secondary.

(b) Provides that if the plan of merger does not provide for the allocation and vesting of the rights, title, and interest in any particular property each entity that is party to the merger owns an undivided interest in the property pro rata to the total number of surviving and new cooperatives and business entities, if the plan of merger does not provide for the allocation of liability, each surviving or new entity is jointly and severally liable for liability or obligation.

(c) Provides that a creditor's right may not be impaired by a merger without the creditor's consent.

(d) Provides that if a surviving entity is not a cooperative or domestic business entity it is considered to have appointed the secretary of state as its agent for service and agreed to pay any dissenting owners or members any amount to which the dissenting owners or member are entitled under law of the formation.

(e) Provides that if the surviving entity is not a cooperative or domestic business entity, the entity must register to transact business in this state.

Sec. 53.406. CONVERSION TO OTHER FORM OF BUSINESS ENTITY. (a) Provides that a cooperative may convert to another form of business entity by adopting a plan of conversion.

(b) Provides that in order to initiate a conversion the board or a committee must prepare a written plan of conversion that includes the name of the cooperative to be converted; the name, organizational form, and jurisdiction of formation; a statement of the entity continuing its existence in that form; the manner and basis of converting the membership interests into the

converted entity; the terms of the conversion; the proposed effect on the members and patron members; and any certificate of formation if it is a domestic business entity.

(c) Provides that a plan of conversion may include other provisions allowed by law.

(d) Provides that after approval of the plan, a certificate of conversion must be filed with the secretary of state that includes the plan of conversion or statement certifying the name of the cooperative that is converting, the name, entity type and jurisdiction of organization, that the converting entity is continuing its existence in that organizational form, that a signed plan of conversion is on file at the place of business of the converting entity, that a signed plan of conversion is on file at the place of business of the converted, that a copy of the plan of conversion will be furnished by the converting entity before the conversion or the converted entity after conversion; a statement that the plan of conversion has been approved as required by law; any certificate of formation or organizational document if the entity is a domestic business.

(e) Provides that when a conversion takes effect, each member has a membership or ownership interest unless previous agreement is made.

(f) Provides that a cooperative may not convert under this section if a member would become personally liable for liability or other obligation without consent.

(g) Provides that when a conversion takes effect, that the entity converting exists without interruption; all rights, title, and interest to all real or other property owned by the converting entity continues to be owned without reversion or impairment, further act or deed, or any transfer or assignment having occurred; all existing liabilities and obligations of the converting entity continue to exist; the rights of creditors or other parties continue to exist; a proceeding that is pending by or against may be continued without substituting a party; the membership interests are converted into the converted entity; if a member is liable after the conversion the person is liable before the conversion took effect only to the extent the person agrees in writing to be liable was liable before the conversion took effect or becomes liable under other applicable law.

Sec. 53.407. ABANDONMENT OF MERGER OR CONVERSION. (a) Provides that at any time a plan is approved but before the merger or conversion takes effect, the cooperative or domestic business entity may abandon the plan.

(b) Provides that if the plan of merger or conversion does not provide for a procedure of abandonment, the board or governing authority may determine the procedure for abandonment.

(c) Provides that if the articles of merger or conversion have been filed, the merger or conversion may be abandoned according to Section 53.102.

Sec. 53.408 - 53.450 reserved for expansion.

SUBCHAPTER J. LIQUIDATION

Sec. 53.451. LIQUIDATION. (a) Provides that a cooperative may be liquidated within the existing articles of organization, or if not provided as a limited liability company.

(b) Provides that members may also authorize liquidation at a member's meeting.

(c) Provides that the board of directors may elect to liquidate at a meeting if the board obtains an opinion from an accountant the cooperative is unlikely to survive based on its current financial situation.

Sections 53.452 - 53.500 reserved for expansion

SUBCHAPTER K. DISSOLUTION

Sec. 53.501. METHODS OF DISSOLUTION. Provides that a cooperative may be dissolved by the members or by the order of a court.

Sec. 53.502. WINDING UP. (a) Provides that a notice of intent to dissolve must be filed with the secretary of state's office and that as soon as possible the cooperative must collect or make provisions for the collection of all debts and pay or make provisions of payment for all debts.

(b) Provides that after the notice of intent to dissolve, the board may sell, lease, transfer or dispose all property and assets without a vote of the members.

(c) Provides that tangible and intangible property may be distributed to the members as stated in the bylaws.

Sec. 53.503. REVOCATION OF DISSOLUTION PROCEEDINGS. (a) Provides that dissolution proceedings may be revoked before articles are filed with the secretary of state's office.

(b) Allows the chair to call a meeting of the members to revoke the dissolution proceedings.

(c) Provides that dissolution revocation is effective when a notice is filed with the secretary of state's office.

Sec. 53.504. STATUTE OF LIMITATIONS. Places the statute of limitations on a claim of a creditor or claimant against the cooperative at not later than 2 years.

Sec 53.505. ARTICLES OF DISSOLUTION. (a) Provides that the articles of dissolution may be filed only after payment of the claims of all known creditors and claimants has been made or provided for.

(b) Provides that the cooperative is dissolved when the articles are filed with the secretary of state.

(c) Provides that the secretary of state shall issue a certificate of dissolution.

Sec. 53.506. APPLICATION FOR COURT SUPERVISED VOLUNTARY DISSOLUTION. After a notice of intent to be dissolved has been filed, a member or creditor may apply to a district court for the county in which the registered address is located to have the dissolution conducted or continued under the supervision of the court as provided by Section 53.513.

Sec. 53.507. COURT-ORDERED REMEDIES OR DISSOLUTION. (a) Provides that district court may grant equitable relief that it considers just and reasonable in the circumstances.

(b) Provides that a court shall take into consideration the financial condition of the cooperative but may not refuse to order equitable relief or dissolution solely on the ground that the cooperative accumulated operating net income or current operating income.

(c) Provides that lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

(d) Provides that a court may award reasonable expenses if it finds that a party has acted inappropriately.

(e) States the proceedings must be brought in a district court for the county in which cooperative is located.

(f) States that members are not necessary party to the action unless personal relief is sought.

Sec. 53.508. PROCEDURE IN INVOLUNTARY OR COURT SUPERVISED VOLUNTARY DISSOLUTION. (a) Establishes that courts may (1) issue an injunction; (2) appoint a receiver with all powers and duties that the court directs; (3) take action required to preserve the cooperative's assets wherever located and to carry on the business of the cooperative.

(b) Provides that the court may appoint a receiver to collect the cooperative's assets.

(c) Provides the order of priority resulting from the sale, lease, transfer, or other disposition of the cooperative's assets.

(d) Provides that after payment of expenses and claims of creditors, any remaining assets may be distributed to the members.

Sec. 53.509. RECEIVER QUALIFICATION AND POWERS. (a) Provides the qualifications for a receiver .

(b) States that receiver may sue and defend on behalf of the cooperative and the receiver has exclusive jurisdiction of it and its property.

Sec. 53.510. DISSOLUTION ACTION BY ATTORNEY GENERAL; ADMINISTRATIVE DISSOLUTION. (a) Provides that a cooperative may be dissolved by order of a court in an action filed by the attorney general.

(b) States that an action may not be brought before the 31st day after the date notice is given to the cooperative by the attorney general of the reason for filing the action.

Sec. 53.511. FILING CLAIMS IN COURT-SUPERVISED DISSOLUTION PROCEEDINGS.

(a) Provides that a court may require a creditor or claimant of the cooperative to file a claim under oath.

(b) Establishes the requirements if the court requires a filing of a claim.

(c) Provides that the court may extend the time, if necessary, for filing claims.

Sec. 53.512. DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION PROCEEDINGS. Provides that the dissolution or voluntary dissolution may be discontinued at any time during the proceeding.

Sec. 53.513. COURT-SUPERVISED DISSOLUTION ORDER. (a) Provides that a court shall enter an order dissolving the cooperative after the costs and expenses have been resolved.

(b) States when a court issues the dissolution order, the cooperative is dissolved.

Sec. 53.514. FILING OF DISSOLUTION ORDER. States that after a dissolution order is issued by the court a certified copy shall be filed with the secretary of state.

Sec. 53.515. BARRING OR CLAIMS. (a) Provides that a person who does not file a claim or pursue a legal remedy during the pendency of the dissolution proceeding are forever barred from suing on that claim.

(b) Provides that not later than the first anniversary of the date of filing of the articles of dissolution, a creditor or claimant may apply a claim to the court.

(c) States that a debt, obligation, or liability incurred during the dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member.

Sec. 53.516. RIGHT TO SUE OR DEFEND AFTER DISSOLUTION. States that after the dissolution of the cooperative, its former officers, directors, or members may assert or defend in the name of the cooperative a claim by or against the cooperative.

SECTION 2. This Act takes effect September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute makes numerous substantive and non-substantive changes to the substitute.

The substitute changes the definition of "Business Entity" and adds definitions for "Governing documents", "Jurisdiction of formation" and "Merger" in Section 53.002.

The substitute adds Section 53.003. APPLICATION OF OTHER LAW, which provides that the provisions of Title 1, Business Organizations Code, applies to a cooperative in the same manner as if it was a limited liability company.

The substitute adds Section 53.004. FEES, which provide that the secretary of state may issue fees for various filings that are filed with the secretary of state's office.

The substitute amends Section 53.052 (a) (2) by adding that the cooperative has the rights powers, or privileges granted to a domestic entity under Chapter 2, Business Organizations Code, except what is inconsistent with this chapter, and adds the term "extend trade credit" and "using security" to (i). It also adds subsection (o) which provides that a cooperative may not act as a credit union, bank, trust company, savings bank, or savings association regulated under that Finance Code.

The substitute renames Subchapter C to "FILINGS" and replaces the old Sections 53.101 - 53.107 and takes the original sections and renumbers them as Sections 53.151 - 53.157

The substitute adds changes Sec. 53.101 which stipulates when filings take effect, Sec. 53.102 which allows for abandonment of filings before it takes effect, Sec. 53.103 stipulates procedures for correcting a filing once filed, Sec. 53.104 which stipulates the requirements for signatures and general filing requirements, Sec. 53.105 provides an appeal process to appeal a decision by the secretary of state, Sec. 53.106, which stipulates penalties for false submission, Sec. 53.107 which provides for the duties of the secretary of state and its authority including the authority to make procedural rules for filings.

The substitute reserves Sections 53.108 - 53.150 for expansion.

The substitute renames Subchapter D "Organizations" and renumbers Sec, 53.101 to 53.151; renumbers Sec. 53.102 to 53.152 and amends it to change the requirements for a cooperative's name; renumbers Sec 53.103 to Sec. 53.153; renumbers and adds (a) (12), amends (c), adds (d), re-letters the original (d) to (e), replaces (f) with a new language that requires filing of articles with the secretary of state and re-letters the original (f) to (g); renumbers Sec. 53.104 to 53.154 and amends (b) by adding (1),(2),(3),(4) stipulating requirements for filing articles of amendment; renumbers Sec. 53.105 to Sec. 53.155 and renames the section "RESTATED ARTICLES OF ORGANIZATION" and amends (b) and (c) and adds (d); renumbers Sec. 53.106 to Sec. 53.156 and renames the section "CONVERSION OF AN EXISTING ASSOCIATION TO BE GOVERNED BY THIS CHAPTER" and amends (a) , adds (b), (c), (d), (e), (f), (g) and (h) which sets requirements for an association trying to convert to a cooperative; renumbers Sec 53.107 to Sec 53.157 which sets requirements for the conversion of an existing business entity; renumbers Sec. 53.106 - 53.158 which provides the requirements for existence of the cooperative, renumbers Sec. 53.107 to Sec 53.1159 and amends (a) (2) (A) by changing "foreign corporation" to "foreign business entity" , amends (d), (e) and removes (f); Section 53.160 is added which provides stipulations for failing to maintain a registered agent or registered office.

Reserves Sections 53.161 - 53.200 for expansion.

Renames Subchapter E "Bylaws" and renumbers Section 53.151 to 53.201.

Renames Subchapter F "Membership and renumbers Section 53.201 to 53.251; renumbers Sec. 53.202 to Sec. 53.252; renumbers Sec. 53.203 to 53.253;

Reserves Sections 53.254 - 53.300 for expansion.

Renames Subchapter G "Members" and renumbers Sec. 53.251 to 53.301; renumbers Sec 53.252 to Sec. 53.302; renumbers Sec. 53.253 to Sec. 53.303; renumbers Sec. 53.254 to Sec. 53.304; renumbers Sec. 53.255 to Sec. 53.305; renumbers Sec. 53.256 to Sec. 53.306, renumbers Sec. 53.257 to Sec. 53.307; renumbers Sec. 53.258 to Sec. 53.308, changes references in (a) to Sec. 53.259 to Sec 53.309 and amends (d) by removing the term "consolidation" and adding the term "conversion" and renumbers Sec. 53.259 to Sec. 53.309.

Reserves Sections 53.310 - 53.350 for expansion

Renames Subchapter H to "Administration" and renumbers Sec. 53.301 to 53.351; renumbers Sec. 53.302 to Sec. 53.352; renumbers Sec. 53.303 to Sec. 53.353; renumbers Sec. 53.304 to Sec. 53.354; renumbers Sec. 53.305 to Sec. 53.355; renumbers Sec. 53.306 to Sec. 53.356; renumbers Sec. 53.307 to Sec. 53.357 and renumbers Sec. 53.308 to Sec. 53.358.

Reserves Sections 53.359 - 53.400 for expansion.

Renames Subchapter I "Merger and Conversion" which stipulates the requirements for mergers and conversions of existing business entities, the substitute renumbers Sec. 53.351 to Sec. 53.401 and renames the section "Merger"; renumbers Sec. 53.352 to 53.402; renumbers 53.353 to Sec. 53.353 to Sec. 53.403 and renames the section "Adoption of Merger Plan"; renumbers Sec. 53.354 to Sec. 53.404 and renames the section "Merger Authorized"; renumbers Sec. 53.355 to Sec. 53.405 and renames the section "Effect of Merger"; the substitute adds Sec. 53.406 titled "Conversion to other form of business entity" which provides the requirements for a cooperative to convert to another form of business entity; and the substitute adds Sec. 53.407 titled "Abandonment of Merger or Conversion" which provides methods for the parties to abandon a merger or conversion.

Sections 53.408 - 53.450 reserved for expansion.

Renames Subchapter J "Liquidation" and renumbers Sec. 53.401 to 53.451;

Reserves Sections 53.452 - 53.500 for expansion.