

BILL ANALYSIS

C.S.H.B. 1617
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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, due to limits in existing law, cooperatives are currently experiencing difficulty in obtaining the necessary capital to invest and expand. Other states such as Wyoming, Minnesota, Wisconsin, Iowa, and Tennessee previously experienced difficulties similar to the situation in Texas. Those states enacted legislation allowing agricultural cooperatives to restructure into limited agricultural cooperatives that are similar to limited liability corporations. In Texas, a similar addition to the law would benefit existing cooperatives if they choose to convert, as well as those who may be considering creating a new cooperative.

C.S.H.B. 1617 creates a new chapter in the Agriculture 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 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 secretary of state in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1617, the Limited Agricultural Cooperatives Act, amends the Agriculture Code to permit the formation of a limited agricultural cooperative. The bill provides that the title in the Business Organizations Code relating to general provisions, to the extent not inconsistent with the provisions of the bill, applies to such a cooperative in the same manner as if the cooperative were a domestic limited liability company.

C.S.H.B. 1617 authorizes a limited agricultural cooperative to be formed and organized on a plan to market, process, or otherwise change the form or marketability of crops, livestock and other agricultural products, including manufacturing and further processing of products, and other purposes to facilitate the production or marketing of agricultural products by patron members or that are related to the business of the cooperative.

C.S.H.B. 1617 defines "patron" to mean a person or entity that conducts patronage business with a cooperative and defines "patronage" to mean business, transactions, or services done for or with the cooperative as defined by the cooperative. The bill defines "patron membership interest" to mean a membership interest that requires the holder to conduct patronage business for or with the cooperative, as specified by the cooperative, to receive financial rights or distributions and defines "patron member" to mean a member who holds a patron membership interest. The bill defines "member" to mean a person or entity shown on the books of a

cooperative as the owner of governance rights of a membership interest of the cooperative and specifies that the term includes patron and nonpatron members. The bill defines "membership interest" to mean a member's interest in a cooperative consisting of a member's financial rights, a member's right to assign financial rights, a member's governance rights, and a member's right to assign governance rights and specifies that the term includes a patron membership interest and a nonpatron membership interest. The bill defines "nonpatron membership interest" to mean a membership interest that does not require the holder to conduct patronage business for or with the cooperative to receive financial rights or distributions.

C.S.H.B. 1617 defines "association" to mean an organization conducting business on a cooperative plan, under the laws of Texas or another state, that is chartered to conduct business under other laws of Texas or another state. The bill defines "address," "board," "business entity," "certificate of formation," "cooperative," "domestic business entity," "foreign business entity," "governing documents," "jurisdiction of formation," "members' meeting," and "merger."

C.S.H.B. 1617 sets forth the powers of a limited agricultural cooperative, including the rights, powers, and privileges granted to a domestic entity under the Business and Commerce Code's Uniform Commercial Code regulations regarding sales, except those that are inconsistent with the provisions of the bill. The bill authorizes a cooperative, in addition to other powers, to perform each act or thing necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative, and a cooperative has the powers provided by these provisions.

C.S.H.B. 1617 authorizes a cooperative to buy, sell, or deal in its own products, the products of the cooperative's individual members, patrons, or nonmembers, the products of another cooperative association or of its members or patrons, or the products of another person or entity and to negotiate the price for which the products the cooperative sells may be sold. The bill authorizes a cooperative to enter into or become a party to a contract or other agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members. The bill authorizes a cooperative to purchase and hold, lease, mortgage, encumber, sell, exchange, or convey real property, buildings, and personal property as the business of the cooperative may require, including selling or otherwise disposing of assets required by the business of the cooperative as determined by the board, and to erect buildings or other structures or facilities on land owned or leased by the cooperative or on a right-of-way acquired by the cooperative.

C.S.H.B. 1617 grants a cooperative the power to issue bonds or other evidence of indebtedness, to borrow money to finance the business of the cooperative, to make advances to the cooperative's members or patrons on products delivered by the members or patrons to the cooperative, and to accept money on account from and maintain credit balances for the benefit of other cooperatives, associations, or the cooperative's members. The bill authorizes a cooperative to extend trade credit to or borrow money from individual members, cooperatives, or associations from which it is constituted using security that it considers sufficient in dealing with the members, cooperatives, or associations. The bill authorizes a cooperative, if reasonably necessary or incidental to accomplish the purposes stated in its certificate of formation, to purchase, acquire, hold, or dispose of an ownership interest in another business entity, whether organized under the laws of Texas or another state, and assume all rights, interests, privileges, responsibilities, and obligations arising out of the ownership interest.

C.S.H.B. 1617 authorizes a cooperative to acquire and hold an ownership interest in another business entity organized under the laws of Texas or another state, including a business entity organized as a federation of associations, for the purpose of forming a district, state, or national marketing, sales, or service agency, or for the purpose of acquiring marketing facilities at terminal or other markets in Texas or other states. The bill authorizes a cooperative to purchase, own, and hold ownership interests, memberships, interests in nonstock capital, or evidences of indebtedness of any domestic business entity or foreign business entity if reasonably necessary

or incidental to accomplish the purposes stated in the certificate of formation. The bill authorizes a cooperative to take, receive, and hold real and personal property, including the principal of and interest on money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative stated in its certificate of formation and may exercise fiduciary powers in relation to the taking, receiving, or holding of the property. The bill establishes that provisions relating to the powers of a cooperative do not authorize a cooperative to engage in the business of a depository institution by receiving or holding deposits, as that term is defined by federal law, or to engage in the business of a fiduciary for hire for a purpose not reasonably necessary or incidental to accomplish the purposes stated in the cooperative's certificate of formation.

C.S.H.B. 1617 sets forth requirements and procedures for the organization, formation, and naming of such a cooperative, and for filings with the secretary of state. The bill authorizes the secretary of state to adopt procedural rules for the filing of such instruments, and requires the secretary of state to impose fees of specified amounts for various types of filings. The bill requires a cooperative to adopt bylaws and to continuously maintain a registered office and registered agent in Texas and authorizes an involuntary termination of the cooperative by the secretary of state if the cooperative does not maintain such office or agent.

C.S.H.B. 1617 provides that a cooperative is governed by a board of directors and requires the board to have at least three directors, a majority of whom must be members. The bill requires at least one director to be elected exclusively by the members holding patron membership interests. The bill establishes that directors are elected and serve terms of office as prescribed by the cooperative's bylaws. The bill includes provisions relating to the election of board officers and to the limitation of a director's liability to the cooperative or its members.

C.S.H.B. 1617 includes provisions relating to membership interests, allocations and distributions to members, including allocations and distributions to patron members. The bill allows the grouping of members in districts, units, or another basis if and as authorized by the cooperative certificate of formation and bylaws. The bill authorizes the board of directors of the cooperative to determine such groupings and to do anything necessary to implement the use of districts or units, including setting the time and place and prescribing the rules of conduct for holding a meeting by a district or unit to elect delegates to members' meetings. The bill sets forth provisions relating to members' meetings, notice of such meetings, member voting rights, and patron member voting in a cooperative that is constituted entirely or partially of other cooperatives or associations. The bill includes quorum provisions and establishes that a quorum for a members' meeting is 10 percent of the total number of members for a cooperative with 500 or fewer members or 50 members for a cooperative with more than 500 members.

C.S.H.B. 1617 authorizes a cooperative and its patron member or patron to enter into a marketing contract requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a certain area exclusively to or through the cooperative or a facility established by the cooperative. The bill provides that the term of a marketing contract may not exceed 10 years, but a marketing contract may be made self-renewing for subsequent periods of five years each, subject to the right of either party to terminate by giving written notice. The bill, among other provisions relating to marketing contracts, provides remedies for breach of such a contract. The bill specifies that a person is liable to the cooperative for civil damages and commits a misdemeanor offense punishable by a fine of not less than \$100 or more than \$1,000, if the person knowingly induces or attempts to induce a member or patron of a cooperative to breach a marketing contract with the cooperative or knowingly spreads false information about the finances or management of a limited agricultural cooperative. The bill provides that it is a defense to prosecution for such a misdemeanor offense that the person is a bona fide creditor or the agent or attorney of a bona fide creditor attempting to collect a debt of the cooperative. The bill provides that a cooperative member who knowingly, intentionally, or repeatedly violates a provision of a marketing contract with the cooperative, or violates a provision of its certificate of formation, its bylaws, or a

member control agreement, may be required by the board of directors to surrender the financial right of membership interest of any class owned by the member or the member's entitlement to vote in the cooperative.

C.S.H.B. 1617 authorizes the conversion of an existing association organized under other Texas law before September 1, 2009, to a limited agricultural cooperative and sets out requirements and provisions relating to such a conversion. The bill requires the members of an existing association to approve a plan of conversion and sets forth the required contents of that plan. The bill authorizes the conversion of an existing business entity other than an association to a limited agricultural cooperative and sets out requirements for such a conversion. The bill authorizes the merger of one or more cooperatives or other business entities, authorizes a cooperative to convert to another form of business entity, and sets forth requirements and provisions relating to such a merger or conversion. The bill provides that a cooperative that holds an ownership interest in another business entity may, by direction of the cooperative's board, elect or appoint a person to represent the cooperative at a meeting of that business entity. The bill authorizes the representative to represent the cooperative and cast its vote at the business entity's meeting.

C.S.H.B. 1617 sets forth provisions and procedures relating to the liquidation, winding up, and termination of a cooperative, including for both voluntary and involuntary termination.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1617 authorizes a cooperative to accept money on account from and maintain credit balances for the benefit of other cooperatives, associations, or the cooperative's members, whereas the original authorizes acceptance of deposits of money from those entities or individuals. The substitute removes a provision from the original authorizing a cooperative to exercise any fiduciary power in relations with the members, cooperatives, associations, or business entities from which it is constituted. The substitute differs from the original by establishing that provisions relating to the power of a cooperative do not authorize a cooperative to engage in the business of a depository institution or of a fiduciary for hire, whereas the original prohibits a cooperative from acting as a credit union, bank, trust, company, savings bank, or savings association regulated under the Finance Code. The substitute removes provisions from the original authorizing a cooperative to distribute unclaimed property.