



**Hundredth Legislature - First Session - 2007
Committee Statement
LB 368**

Hearing Date: February 26, 2007

Committee On: Banking, Commerce and Insurance

Introducer(s): (Erdman)

Title: Adopt the Nebraska Limited Cooperative Association Act

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

8	Yes	Senators Pahls, Langemeier, Carlson, Christensen, Gay, Hansen, Pankonin, Pirsch
	No	
	Present, not voting	
	Absent	

Proponents:

Senator Phil Erdman
Robert C. Andersen
Steve Erdman
Randy Robeson
Bruce Favinger
Ken Boswell
Scott Merritt
Daniel Rice

William B. Bevans

Representing:

Introducer
NE Cooperative Council
Stateline Bean Co-op
Frontier Co-op
Heartland Co-op
NE Farm Bureau Federation
NE Corn Growers Association
Prairieland Dairy
American Dairy Association
NE Turkey Growers Co-op

Opponents:

Robert J. Hallstrom

Representing:

NE Bankers Association

Neutral:

Larry Ruth

Representing:

National Conference of Commissioners on
Uniform State Laws
Secretary of State's Office

Summary of purpose and/or changes:

LB 368 (Erdman) would enact 133 new sections to provide for the formation of limited cooperative associations.

The bill contains, section by section, the following subject matter:

GENERAL PROVISIONS

Section 1. Names act – the Nebraska Limited Cooperative Association Act.

Section 2. Limited cooperative associations subject to amendment or repeal of the act.

Section 3. Definitions.

Section 4. Purpose and duration of a limited cooperative association.

Section 5. Powers of a limited cooperative association.

Section 6. Name of a limited cooperative association.

Section 7. Reservation of name of a limited cooperative association.

Section 8. Registered name of a foreign limited cooperative association.

Section 9. Use of the term “cooperative” or “nonstock cooperative”.

Section 10. Required information.

Section 11. Business transactions of a participant with a limited cooperative association.

Section 12. Dual capacity as patron participant and an investor participant.

Section 13. Designated office and agent for service of process.

Section 14. Change of designated office or agent for service of process.

Section 15. Resignation of agent for service of process.

Section 16. Service of process.

FILING AND ANNUAL REPORTS

Section 17. Signing of records to be delivered for filing to the Secretary of State.

Section 18. Signing and filing records pursuant to judicial order.

Section 19. Delivery to and filing of records with Secretary of State; effective time and date.

Section 20. Correcting filed record.

Section 21. Liability for false information in filed record.

Section 22. Certificate of good standing or authorization.

Section 23. Annual report filed with Secretary of State.

Section 24. Filing fees.

FORMATION AND ARTICLES OF ORGANIZATION

Section 25. Organizers.

Section 26. Formation of limited cooperative association; delivery of articles of organization.

Section 27. Organization of limited cooperative association.

Section 28. Bylaws.

PARTICIPANTS

Section 29. Participants.

Section 30. Becoming a participant.

Section 31. No right or power as participant to bind limited cooperative association.

Section 32. No liability as participant for obligations of limited cooperative association.

Section 33. Right of participant to information.

Section 34. Annual participants' meetings.

Section 35. Special participants' meeting.

Section 36. Notice of participants' meetings.

Section 37. Waiver of participants' meeting notice.

Section 38. Quorum of participants.

Section 39. Voting by participants.

Section 40. Action without a meeting.

Section 41. Allocation of additional voting power.

Section 42. Voting by investor participants.

Section 43. Delegate voting; secret ballot; conducting meetings.

Section 44. Districts and delegates; classes of participants.

PARTICIPANT INTEREST

Section 45. Participant interest.

Section 46. Patron and investor participant interests.

Section 47. Transferability of participant interest.

Section 48. Security interest.

CONTRACTS

Section 49. Contracts.

Section 50. Contract for sale of product or commodity.

Section 51. Duration of contract term.

Section 52. Remedies for breach of contract.

DIRECTORS AND OFFICERS

Section 53. Board of Directors.

Section 54. No liability as director for obligations of limited cooperative association.

Section 55. Qualifications of directors and composition of the board.

Section 56. Election of directors.

Section 57. Term of directors.

Section 58. Resignation of director.

Section 59. Removal of director by participants.

Section 60. Suspension of director by the board.

Section 61. Vacancy on the board.

Section 62. Compensation of directors and nondirector committee participants.

Section 63. Meetings of the board of directors.

Section 64. Action without meeting of the board of directors.

Section 65. Meetings of the board of directors and notice.

Section 66. Waiver of notice of meeting of the board of directors.

Section 67. Quorum of the board of directors.

Section 68. Voting by directors.

Section 69. Committees created by the board of directors.

Section 70. Duties of a director.

Section 71. Conflicts of the interest.

Section 72. Rights of director to information.

Section 73. Other considerations of directors.

Section 74. Authority of officers; election or appointment of officers.

Section 75. Removal and resignation of officers.

INDEMNIFICATION

Section 76. Indemnification; purchase of insurance.

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

Section 77. Participants' contributions.

Section 78. Forms of contribution and valuation.

Section 79. Contribution agreements.

Section 80. Allocation of net proceeds, savings, margins, profits, and losses.

Section 81. Distributions to participants.

DISSOCIATION

Section 82. Dissociation of a participant.

Section 83. Effect of dissociation as participant.

DISSOLUTION

Section 84. Dissolution.

Section 85. Judicial dissolution.

Section 86. Voluntary dissolution before commencement of activity.

Section 87. Voluntary dissolution by the board of directors and participants.

Section 88. Winding up.

Section 89. Distribution of assets in winding up limited cooperative association.

Section 90. Known claims against a dissolved limited cooperative association.

Section 91. Other claims against a dissolved limited cooperative association.

Section 92. District court proceedings.

Section 93. Administrative dissolution.

Section 94. Reinstatement following administrative dissolution.

Section 95. Denial of reinstatement; appeal.

Section 96. Statement of dissolution.

ACTIONS BY PARTICIPANTS

Section 97. Direct action by a participant.

Section 98. Derivative action by a participant.

Section 99. Proper plaintiff in a derivative action.

Section 100. Proper pleading in a derivative action.

Section 101. Proceeds and expenses in a derivative action.

FOREIGN LIMITED COOPERATIVE ASSOCIATIONS

Section 102. Governing law.

Section 103. Application for a certificate of authority.

Section 104. Activities not constituting transacting business.

Section 105. Filing of certificate of authority.

Section 106. Noncomplying name of a foreign limited cooperative association.

Section 107. Revocation of certificate authority.

Section 108. Cancellation of certificate of authority; effect of failure to have a certificate of authority.

Section 109. Action by Attorney General.

AMENDMENTS OF ARTICLES OF ORGANIZATION OR BYLAWS

Section 110. Authority to amend articles of organization or bylaws.

Section 111. Notice and action on amendment of articles of organization or bylaws.

Section 112. Amendment of articles of organization or bylaws at a participants' meeting.

Section 113. Approval of amendment at a participants' meeting.

Section 114. Voting on an amendment by group, class, or district of participants.

Section 115. Emergency bylaws.

Section 116. Amendment or restatement of articles of organization.

CONVERSION, MERGER, AND CONSOLIDATION

Section 117. Definitions for sections 117 to 128.

Section 118. Conversion.

Section 119. Action on a plan of conversion.

Section 120. Filings required for conversion; effective date.

Section 121. Effect of conversion.

Section 122. Merger.

Section 123. Notice and action on a plan of merger.

Section 124. Approval or abandonment of merger.

Section 125. Merger of subsidiary.

Section 126. Filings required for merger; effective date.

Section 127. Effect of merger.

Section 128. Consolidation.

DISPOSITION OF ASSETS

Section 129. Participant approval of disposition of assets.

Section 130. Board of directors approval of proposed disposition of assets; notice to participants.

Section 131. Participants' vote to consent to disposition of assets.

MISCELLANEOUS PROVISIONS

Section 132. Participant interests exempt from Securities Act of Nebraska.

Section 133. Immunities, rights, and privileges of a limited cooperative association.

REVENUE AND TAXATION

Sections 134 to 140 would amend section 77-2716 of the Nebraska Revenue Act of 1967, sections 77-27,187.01 and 77-27,194 of the Nebraska Advantage Rural Development Act, section 77-5509 of the Invest Nebraska Act, sections 77-5719 and 77-5728 of the Nebraska Advantage Act, and section 77-5903 of the Nebraska Advantage Microenterprise Tax Credit Act to provide for treatment of limited cooperative associations in the same manner as partnerships, limited liability companies, subchapter S corporations, cooperatives, and joint ventures.

OTHER MISCELLANEOUS PROVISIONS

Section 141 would provide that the act becomes operative on January 1, 2008.

Section 142 would provide for repealers of the amendatory sections.

Explanation of amendments, if any:

The committee amendments (AM717) would amend section 5 to provide that a limited cooperative association shall not issue bonds, debentures, or other evidences of indebtedness to a participant unless, prior to issuance, the association provides the participant with a disclosure stating that the money is not insured or guaranteed by an agency or instrumentality of the United States government and that the investment may lose value. The disclosure would not be required if the participant is a sophisticated investor under the Securities Act of Nebraska.

The committee amendments would further amend section 5 to provide that any extension of credit by a limited cooperative association to a participant in connection with the sale of the association's goods or services shall not exceed nine months or be secured by real property, except that an extension of credit in default may be extended or renewed in successive periods not exceeding nine months and may be secured by real property. No new money may be advanced by an association in connection with such an extension or renewal.

The committee amendments would amend section 48 to correct a drafting error so that subsection (1) would correctly read: An investor participant or transferee may grant a security interest in financial rights in a limited cooperative association, but not in the governance rights in such association.

Senator Rich Pahls, Chairperson