

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -  
2008**

**COMMITTEE STATEMENT**

**LB848**

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**Hearing Date:** February 04, 2008

**Committee On:** Banking, Commerce and Insurance

**Introducer(s):** (Erdman)

**Title:** Change the Nebraska Limited Cooperative Association Act

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**Roll Call Vote - Final Committee Action:**

Placed on General File

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**Vote Results:**

|   |                     |  |
|---|---------------------|--|
| 8 | Yes                 | Senators Carlson, Christensen, Gay, Hansen,<br>Langemeier, Pahls, Pankonin, Pirsch |
| 0 | No                  |  |
| 0 | Absent              |  |
| 0 | Present, not voting |  |

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**Proponents:**

Senator Phil Erdman

Rocky Weber

Larry Ruth

Ron Moravec

**Opponents:****Neutral:****Representing:**

Self

NE Cooperative Council

National Conference of Commissioners on  
Uniform State Laws

Secretary of State

**Representing:****Representing:**

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**Summary of purpose and/or change:**

LB 848 (Erdman) would amend various sections of the Nebraska Limited Cooperative Association Act, enacted as LB 368 in 2007, in order to clarify provisions and update provisions to make them more consistent with the Uniform Limited Cooperative Association Act as approved and recommended to the states for enactment by the National Conference of Commissioners on Uniform State Laws in 2007. The bill would provide, section by section, as follows:

Section 1 would amend section 21-2901 of the Nebraska Limited Cooperative Association Act to provide for new sections 19 to 21 of the bill to be assigned within the act.

Section 2 would amend section 21-2903 of the Nebraska Limited Cooperative Association Act to provide that (1) the definition of "distribution" means a transfer of money or other property from a limited cooperative association to a member "because of the members' financial rights or to a transferee of a member's financial rights" rather than a transfer of money or other property from a limited cooperative association to a member "in the member's capacity as a member or to a transferee because of a right owned by the transferee", (2) the definition of "entity" includes "a cooperative," (3) the definition of "investor" means a "member that has made a contribution to a limited cooperative association and is not permitted or required by the articles of association or bylaws" to conduct patronage business with the limited cooperative association in order to receive financial rights rather than a "person admitted as a member that is not required" to conduct patronage business with the limited cooperative association in order to receive financial rights, and (4) the definition of "member" means a person that is a patron member or investor member "or both" in a limited cooperative association.

Section 3 would amend section 21-2922 of the Nebraska Limited Cooperative Association Act to provide for furnishing by the Secretary of State of certificates of "good standing" rather than certificates of "existence."

Section 4 would amend section 21-2929 of the Limited Cooperative Association Act to provide that a limited cooperative association may have only one member if the member is an entity organized under the Nonstock Cooperative Marketing Act, the cooperative corporation statutes, the cooperative credit association statutes, or the cooperative farm land company

statutes, in addition to entity organized under the Nebraska Limited Cooperation Association Act.

Section 5 would amend section 21-2935 of the Nebraska Limited Cooperative Association Act to provide that a special members' meeting may be called by members holding at least "twenty" percent rather than "ten" percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting or at least "twenty" percent rather than "ten" percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

Section 6 would amend section 21-2939 of the Nebraska Limited Cooperative Association Act to provide that (1) if the articles of organization provide for investor members, each investor has one vote, unless the articles of organization or bylaws otherwise provide and (2) the articles of organization or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

Section 7 would amend section 21-2945 of the Nebraska Limited Cooperative Association Act to provide that a member's interest consists of, among other things, governance rights rather than governance rights "under allocation and distributions".

Sections 8 to 10 would amend sections 21-2949 to 21-2951 of the Nebraska Limited Cooperative Association Act, regarding marketing contracts, by striking all of their provisions and replacing them with provisions based on sections 701 to 703 of the Uniform Limited Cooperative Association Act.

Section 11 would amend section 21-2952 of the Nebraska Limited Cooperative Association Act by striking and replacing all of its provisions regarding (1) liquidated damages paid to a limited cooperative association for a breach or anticipatory repudiation of a marketing contract and (2) injunctive relief to prevent the further breach or an anticipatory repudiation of the marketing contract and specific performance of the marketing contract.

Section 12 would amend section 21-2953 of the Nebraska Limited Cooperative Association Act to provide that the board of directors may adopt policies and procedures that are not in conflict with the articles of organization, the bylaws, or the Nebraska Limited Cooperative Association Act.

Section 13 would amend section 21-2955 of the Nebraska Limited Cooperative Association Act to provide that, unless otherwise provided in the articles of organization or bylaws, a director "may" rather than "shall" be an officer or employee of the limited cooperative association.

Section 14 would amend section 21-2956 of the Nebraska Limited Cooperative Association Act to provide that the "bylaws" as well as the articles of organization may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

Section 15 would amend section 21-2959 of the Nebraska Limited Cooperative Association Act, regarding removal of a director with or without cause, by striking all of its

provisions and replacing them with provisions based on section 807 of the Uniform Limited Cooperative Association Act.

Section 16 would amend section 21-2960 of the Nebraska Limited Cooperative Association Act, regarding suspension of a director, by inserting additional provisions based on section 808 of the Uniform Limited Cooperative Association Act.

Section 17 would amend section 21-2978 of the Nebraska Limited Cooperative Association Act to change a reference regarding a member's contribution obligation being "paid" to being "met."

Section 18 would amend section 21-2980 of the Nebraska Limited Cooperative Association Act, regarding allocation of profits and losses, by inserting additional provisions based on section 1004 of the Uniform Limited Cooperative Association Act.

Sections 19 to 21 would enact new sections within the Nebraska Limited Cooperative Association Act regarding redemption or repurchase, limitations on distributions, and liability for improper distributions based on sections 1006 to 1008 of the Uniform Limited Cooperative Association Act.

Section 22 would amend section 21-2992 of the Nebraska Limited Cooperative Association Act to clarify that a dissolved limited cooperative association shall publish notice of its dissolution and "may" request persons having claims against the limited cooperative association to present themselves in accordance with the notice.

Section 23 would amend section 21-29,110 of the Nebraska Limited Cooperative Association Act to provide that "unless the articles of organization or bylaws provide otherwise," a member of a limited cooperative association does not have vested "property" rights "resulting from" rather than "in" any provision in the articles of organization or bylaws.

Section 24 would amend section 21-29,117 of the Nebraska Limited Cooperative Association Act, regarding conversion, merger, and consolidation, to provide that the definition of "organization" includes "a cooperative."

Section 25 would amend section 21-29,125 of the Nebraska Limited Cooperative Association Act to repeal an erroneous reference to the "organic law" of a limited cooperative association.

Section 26 would provide for repealers of the amendatory sections.

**Explanation of amendments, if any:**

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Senator Rich Pahls, Chairperson