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(As Introduced)

Rep. Reinhard

BILL SUMMARY

**PURPOSES, ORGANIZATION, GOVERNING DOCUMENTS,
AND POWERS OF R.C. CHAPTER 1770. COOPERATIVE**

- Authorizes the establishment of a new form of cooperative business entity for any lawful purpose, including (1) marketing, processing, or otherwise changing the form or marketability of products, including crops, livestock, and other agricultural products, manufacturing and further processing of those products, other purposes necessary or convenient to facilitate the production or marketing of products by patron members and others, and other purposes that are related to the cooperative's business, (2) providing products, supplies, and services to its members, and (3) any other purposes that cooperatives are authorized to perform by law (R.C. 1770.02).
- Provides that a cooperative may be organized by one or more organizers who must be over 18 years of age and citizens of the United States and who may act for themselves as individuals or as the agents of other entities (R.C. 1770.03); requires the articles of organization to be signed by the organizers and to contain the cooperative's name and purpose, each organizer's name and address, the period of the cooperative's duration if it is not to be perpetual, and any other lawful provision; requires the filing of the articles and a designation of the cooperative's registered office and statutory agent with the Secretary of State (R.C. 1770.05); and prescribes the procedure and required vote to amend the articles (R.C. 1770.06).

- Authorizes an existing R.C. Chapter 1729. cooperative to convert to an R.C. Chapter 1770. (the bill) cooperative by amending its articles of incorporation to conform to the bill's requirements; requires a converting cooperative to furnish to its members a disclosure statement of the members' rights and obligations and its capital structure before conversion and to file its articles of compliance with R.C. Chapter 1770. and a certificate of conversion with the Secretary of State; and specifies that the converting cooperative's rights, privileges, powers, interests in property, debts, liabilities, and duties are not deemed as a consequence of the conversion to have been transferred for any purpose of the laws of Ohio (R.C. 1770.07).
- Requires a cooperative governed by the bill to file a biennial registration with the Secretary of State, requires the Secretary of State to involuntarily dissolve a cooperative that fails to file the registration, and permits the cooperative to retroactively reinstate its existence by filing a biennial registration (R.C. 1770.11).
- Requires a cooperative to adopt bylaws, generally before any distributions to members, governing its business affairs, its structure, the qualifications, classification, rights, and obligations of members, and the classifications, allocations, and distributions of membership interests that are not otherwise provided in the articles or the bill; lists the required contents of the bylaws; provides a procedure for the adoption and amendment of the bylaws; and generally authorizes the board to adopt bylaws in an emergency in which a quorum of directors cannot readily be obtained because of a catastrophic event (R.C. 1770.12).
- Authorizes a cooperative to perform every act necessary or proper to the conduct of the cooperative's business or the accomplishment of its purposes, except that it cannot exercise the powers of a credit union or a bank, savings and loan association, or savings bank; and specifies the powers of a cooperative, including buying, selling, or dealing in its own products or the products of its individual members, patrons, or nonmembers, of another cooperative or an association or of its members or patrons, or of another person or entity (R.C. 1770.14).
- Authorizes a cooperative and a patron or patron member to execute marketing contracts that require the patron or patron member to sell a specified portion of the patron's or patron member's agricultural product

or specified commodity produced from a certain area exclusively to or through the cooperative or a facility established by the cooperative; prohibits any person from knowingly inducing or attempting to induce a patron or patron member to breach a marketing contract or knowingly spreading false reports about the cooperative's finances or management; and makes a violation of that prohibition a misdemeanor (R.C. 1770.17).

BOARD OF DIRECTORS, COMMITTEES, OFFICERS, INDEMNIFICATION

- Provides that a cooperative is governed by a board of directors generally consisting of at least five directors; states that the fiduciary duty of a director is to represent the best interests of the cooperative and all members collectively; provides procedures for the election, allocation of voting authority, term of office, compensation, and removal of a director and for filling a vacancy or new director position on the board; specifies the requirements for notices of board meetings; permits meetings of the board to be conducted by any means of communication through which the directors may simultaneously hear each other; and generally requires that any board action taken be by affirmative vote of the greater of a majority of directors present at the meeting at the time the action is taken or a majority of the minimum portion or number of directors constituting a quorum for the transaction of business at the meeting (R.C. 1770.20 to 1770.25).
- Specifically requires a director to discharge the director's position in good faith, in a manner that the director reasonably believes to be in the cooperative's best interest, and with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances and specifies the circumstances in which certain contracts or transactions that would otherwise present a conflict of interest involving a director would not be rendered void or voidable (R.C. 1770.27 and 1770.28).
- Precludes the articles or bylaws from eliminating or limiting a director's liability for breach of the duty of loyalty to the cooperative or its members, actions or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law, illegal distributions, transactions from which the director derived improper personal benefit, or actions or omissions occurring before the date when the articles' or bylaws' provision eliminating or limiting liability takes effect (R.C. 1770.29).

- Requires the board of directors to establish an audit committee to review the financial information and accounting report of the cooperative and authorizes the board by resolution to establish committees for the management of the cooperative's business, including a special litigation committee consisting of independent directors or independent persons to consider the cooperative's legal rights and remedies (R.C. 1770.26).
- Requires the board to elect a chair and one or more vice-chairs and to elect or appoint a records officer and a financial officer or a records and financial officer combined, and authorizes the board to elect or appoint additional officers and to employ a chief executive officer to manage the cooperative's day-to-day affairs and business (R.C. 1770.31).
- Generally requires a cooperative to indemnify a person that is made or threatened to be made a party to a proceeding by reason of the person's official capacity, against judgments, penalties, fines, settlements, and reasonable expenses, including attorneys' fees and disbursements made by the person in connection with the proceeding, if specified conditions apply with respect to the person's acts or omissions complained of in the proceeding; provides that the articles or bylaws may prohibit indemnification or advancement of expenses or may impose additional conditions; and prescribes the voting requirements for making determinations concerning whether indemnification or advancement of expenses should be made (R.C. 1770.30).

MEMBERS, MEMBERS' MEETINGS, VOTING

- Requires a cooperative to have one or more members, including one or more "patron members" (members who conduct patronage business, transactions, or services for or with the cooperative); authorizes a cooperative to divide members into units, classes, or series as authorized by the articles or bylaws; and provides that a member is not personally liable for the acts, debts, liabilities, or obligations of the cooperative (R.C. 1770.32 and 1770.33).
- Prescribes the procedures for holding regular members' meetings annually and special members' meetings, including notice of the meetings, quorum necessary to transact business, and a provision that allows meetings to be held by means of remote communication under certain circumstances and for a member to participate at a meeting by remote communication (R.C. 1770.34 and 1770.38).

- Generally requires that members take action by the affirmative vote of a majority of the voting power of the membership interests constituting a quorum and entitled to vote on an item of business; provides for proportional voting of a unit, class, or series of membership interests entitled to vote as a unit, class, or series; provides that the bylaws must require patron members to vote collectively based on the vote of the majority of patron members voting on an issue before the members; permits patron members to be represented by the proxy of other patron members and permits nonpatron members to be represented by proxy if authorized by the bylaws; and prescribes procedures for voting "membership interests" (members' financial and governance rights and rights to assign them) owned by cooperative members or others (R.C. 1770.39 and 1770.40).
- Specifies the requirements for a member to exercise the right to inspect and copy the cooperative's records and provides that no member has the right to inspect or copy records relating to the amount of equity capital in the cooperative held by any person, any accounts receivable or amounts due the cooperative from any person, or any personnel records or employments records of any employee (R.C. 1770.46).

**MEMBERSHIP INTERESTS, MEMBERSHIP CONTRIBUTIONS,
MEMBERSHIP DISTRIBUTIONS**

- Provides for the issuance of authorized membership interests on terms and conditions prescribed in the articles or bylaws or as determined by the board if so authorized; requires specified disclosures to persons acquiring membership interests; and provides that after issuance membership interests may only be sold or transferred with the board's approval (R.C. 1770.50).
- Requires that all membership interests be of one class, without series, unless the articles or bylaws authorize more than one class or series within classes, be ordinary patron membership interests or, if authorized in the articles or bylaws, nonpatron membership interests, share profits and losses, and be entitled to distributions (R.C. 1770.52).
- Generally requires patron membership interests collectively to have not less than 60% of the cooperative's rights to profit allocations and distributions; requires that if not otherwise provided in the articles or bylaws, distributions of cash or assets must be made on the basis of value

of the capital contributions of the patron membership interests collectively and the nonpatron membership interests to the extent that the contributions have been accepted by the cooperative (R.C. 1770.50).

- Provides that generally a member's financial interests are transferable in whole or in part, that an assignment of a member's financial interests entitles the assignee to receive to the extent of the assignment only the assignor's share of profits and losses and distributions to which the assignor would otherwise be entitled, and that such an assignment does not entitle the assignee to become a member, exercise any governance rights, receive notices, or cause the cooperative's dissolution (R.C. 1770.51).
- Requires that membership interests be either certificated or uncertificated; specifies the required contents on the face of a certificate of membership interests; and provides that unless uncertificated membership interests are prohibited in the articles or bylaws, a resolution approved by a majority vote of the directors may provide that some or all of any class or series or all classes and series of its membership interests will be uncertificated (R.C. 1770.53).
- Provides for control agreements among persons who are then members or have signed subscription or contribution agreements, relating to the control of any phase of the cooperative's business and affairs, its liquidation, dissolution, and termination, or the relations among those persons (R.C. 1770.56).
- Authorizes a cooperative, subject to any restrictions in the bill or in the articles or bylaws and only when authorized by the board, to accept patron or nonpatron membership contributions by payment of money, transfer of an interest in property, performance of services, or a written obligation for such payment, transfer, or performance; requires a cooperative to restate the value of old contributions pertaining to the same series or class to which a new contribution pertains in accordance with a specified formula; provides a procedure for the enforcement of a contribution agreement that is in writing and signed by a would-be contributor; and generally authorizes a cooperative to enter into contribution rights agreements (R.C. 1770.60).
- Requires the bylaws to prescribe the allocation of profits and losses between patron membership interests collectively and any other

membership interests and the distribution of cash or other assets among membership interests; provides that if the bylaws do not provide otherwise, such allocations and distributions must be made on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative; and generally precludes those allocations and distributions to patron membership interests collectively from being less than 50% of the total profits or distributions, as the case may be, in any fiscal year (R.C. 1770.64).

- Authorizes a cooperative to set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve and requires net income allocated to patron members in excess of dividends on equity and additions to reserves to be distributed to patron members on the basis of patronage (R.C. 1770.65).

MERGER OR CONSOLIDATION, DISPOSITION OF ASSETS, DISSOLUTION

- Authorizes a cooperative to merge or consolidate with one or more business entities if the merger or consolidation is permitted by the laws under which each constituent entity exists and the cooperative complies with specified requirements, including the preparation and adoption of a written plan of merger or consolidation and notification to all the members; permits the amendment or abandonment of the merger or consolidation after a plan of merger or consolidation is approved but before the effective date of the merger or consolidation; requires the filing of the signed articles of merger or consolidation with the Secretary of State on a form containing specified information (R.C. 1770.70 to 1770.72).
- Authorizes a cooperative to sell, lease, transfer, or otherwise dispose of, or grant a security interest in, all or substantially all of its property and assets whether or not in the usual and regular course of business, to transfer its property to a business entity all of the ownership interests of which are owned by the cooperative, or to transfer its property for debt financing purposes to a special purpose entity owned or controlled by the cooperative for an asset securitization (R.C. 1770.80).

- Authorizes a cooperative to be dissolved voluntarily upon the adoption of a resolution of dissolution by the directors in specified cases or by a required vote of the members, the filing of a certificate of dissolution with the Secretary of State with the required documentation, and compliance with specified procedures, including publication of a notice of voluntary dissolution (R.C. 1770.81).
- Requires a cooperative to cease carrying on business and to do only those acts required for winding up its affairs when it is voluntarily dissolved, the articles of organization have been canceled, a final court order is made dissolving a cooperative, or the period of its existence has expired; provides that the assets must be applied in the following order: to expenses incidental to winding up its affairs, to all of its legally enforceable liabilities and obligations, and to its members and patrons as provided in the articles or bylaws; authorizes a court of common pleas of the county in which is located the cooperative's principal executive office, upon complaint and notice, to order and adjudge any of specified matters pertaining to the winding up of its affairs; and provides for the appointment of a receiver to wind up the cooperative's affairs (R.C. 1770.83 to 1770.85).
- Permits the judicial dissolution and winding up of the affairs of a cooperative by an order of the court of common pleas of the county in which the cooperative has its principal executive office in an action brought by the members having the required voting power and when it is established that the judicial dissolution is beneficial to the members or patrons (R.C. 1770.86).

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CONTENT AND OPERATION

Background and overview of the bill

The existing Ohio Cooperative Law (R.C. Chapter 1729.) authorizes the organization of an association for any lawful purpose generally permitted to corporations by Ohio laws and provides that these associations are corporations deemed nonprofit because they are not organized for the purpose of making profit for themselves as such or for their members as such but for their members as patrons. These associations are governed by the Ohio Cooperative Law and not by the Nonprofit Corporation Law (R.C. Chapter 1702.). (R.C. 1729.02.)

The bill authorizes the establishment of a new form of cooperative business entity for any lawful purpose and governed by R.C. Chapter 1770. enacted by the bill.

Definitions

The bill defines the following terms used in new R.C. Chapter 1770. This analysis initially refers to the defined terms in quotation marks. (R.C. 1770.01.)

"Address" means mailing address, including a zip code. In the case of a registered address, "address" means the mailing address and the actual office location, which may not be a post office box.

"Alternative ballot" means a method of voting on a candidate or issue prescribed by the board of directors of a cooperative in advance of the vote and may include voting by electronic, telephonic, internet, or other means that reasonably allows members the opportunity to vote.

"Articles" means the articles of organization of a cooperative as originally filed and subsequently amended.

"Association" means an organization conducting business on a cooperative plan under the laws of Ohio or another state that is chartered to conduct business under other laws of Ohio or another state.

"Board" means the board of directors of a cooperative.

"Business entity" means a company, limited liability company, limited liability partnership, or other legal entity, whether domestic or foreign, association, or body vested with the power or function of a legal entity.

"Cooperative" means a domestic business entity organized under the bill conducting business on a cooperative plan as provided in the bill.

"Domestic business entity" means a business entity organized under the laws of Ohio.

"Domestic cooperative" means a cooperative organized under the bill (new R.C. Chapter 1770.) or R.C. Chapter 1729.

"Foreign business entity" means a business entity that is not a domestic business entity.

"Foreign cooperative" means a foreign business entity organized to conduct business on a cooperative plan consistent with new R.C. Chapter 1770. or R.C. Chapter 1729.

"Member" means a person or entity reflected on the books of a cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members.

"Membership interest" means a member's interest in a cooperative consisting of a member's financial rights, right to assign financial rights, governance rights, and right to assign governance rights. "Membership interest" includes patron membership interests and nonpatron membership interests.

"Members' meeting" means a regular or special members' meeting.

"Limited liability company" means a limited liability company governed by R.C. Chapter 1705.

"Nonpatron membership interest" means a membership interest that does not require the holder to conduct patronage business for or with a cooperative to receive financial rights or distributions.

"Patron" means a person or entity who conducts patronage business with a cooperative.

"Patronage" means business, transactions, or services done for or with a cooperative as defined by the cooperative.

"Patron member" means a member holding a patron membership interest.

"Patron membership interest" means a membership interest requiring the holder to conduct patronage business for or with a cooperative as specified by the cooperative to receive financial rights or distributions.

"Signed" means that the signature of a person has been written on a document and, with respect to a document required by the bill to be filed with the

Secretary of State, means that the document has been signed by a person authorized to do so by the bill, the articles or bylaws of a cooperative, or a resolution approved by the cooperative's directors or members. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

PURPOSES, ORGANIZATION, GOVERNING DOCUMENTS, AND POWERS OF R.C. CHAPTER 1770. COOPERATIVE

Purposes of cooperative

A "cooperative" may be formed and organized on a cooperative plan for any lawful purpose, including any of the following: (1) marketing, processing, or otherwise changing the form or marketability of products, including crops, livestock, and other agricultural products, manufacturing and further processing of those products, other purposes necessary or convenient to facilitate the production or marketing of products by "patron members" and others, and other purposes that are related to the cooperative's business, (2) providing products, supplies, and services to its "members," and (3) any other purposes that cooperatives are authorized to perform by law (R.C. 1770.02).

Organizing a cooperative

A cooperative may be organized by one or more organizers who must be over 18 years of age and citizens of the United States and who may act for themselves as individuals or as the agents of other entities. The organizers forming the cooperative need not be members of the cooperative. If the first "board" is not named in the articles of organization, the organizers may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors until directors are elected or until a contribution is accepted in accordance with the bill, whichever occurs first. After the filing of the articles of organization, the organizers or the directors named in the articles must either hold an organizational meeting at the call of a majority of the organizers or of the directors named in the articles or take written action for the purposes of transacting business and taking actions necessary or appropriate to complete the cooperative's organization, including, without limitation, amending the articles, electing directors, adopting bylaws, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, adopting a fiscal year for the cooperative, contracting to receive and accept contributions, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting must give at least three days' notice of the meeting to each organizer or director named, stating the date, time, and place of the meeting. Organizers and directors may

waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board. (R.C. 1770.03.)

Name of cooperative

The name of a cooperative must distinguish the cooperative on the records of the Secretary of State (hereafter "SOS") from the name of any other "domestic business entity" or "foreign business entity" authorized or registered to do business in Ohio or from a name, the right to which is, at the time of organization of the cooperative, reserved or provided for by law. The cooperative name must be reserved for the cooperative during its existence. (R.C. 1770.04.)

Articles of organization

The "articles" of the cooperative must include all of the following: the name of the cooperative, the purpose of the cooperative, the name and "address" of each organizer, the period of duration for the cooperative if the duration is not to be perpetual, and any other lawful provision. The articles must be "signed" by the organizers. The original articles and a designation of the cooperative's registered office and statutory agent must be filed with the SOS.

When the articles, the registration form described below in "**Biennial registration**," and the designation of the cooperative's registered office and statutory agent have been filed with, and the required fee has been paid to, the SOS, it is presumed that all conditions precedent that are required to be performed by the organizers have been complied with and the organization of the cooperative has been chartered by the state as a separate legal entity. (R.C. 1770.05.)

Amendment of articles

The articles of a cooperative may be amended and, if amended, must be amended as follows (R.C. 1770.06(A)):

(1) The board, by majority vote, must pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached mail or "alternative ballot" must be mailed or otherwise distributed with a regular or special meeting notice to each member. The notice must designate the time and place of the meeting for the proposed amendment to be considered and voted on.

(2) If a quorum of the members exists, the proposed amendment is adopted if either (a) the proposed amendment is approved by a majority of the votes cast, or (b) in the case of a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the

articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(3) After an amendment has been adopted by the members, the amendment must be signed by the chair, vice-chair, records officer, or assistant records officer.

A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

When adopted, the amendments must be filed as described in "Filing fees," below. (R.C. 1770.06(B) and (C).)

Conversion of Chapter 1729. cooperative

A cooperative organized under R.C. Chapter 1729. (hereafter "converting cooperative") may convert and become subject to new R.C. Chapter 1770. by amending its articles of incorporation to conform to the new chapter's requirements (R.C. 1770.07(A)).

Disclosure statement and certificate

A converting cooperative must provide its members with a disclosure statement of the rights and obligations of the members and the capital structure of the cooperative before becoming subject to the new chapter. A converting cooperative, upon distribution of the disclosure statement and approval of its members as necessary for amending its articles under R.C. Chapter 1729., may amend its articles to comply with the new chapter. The converting cooperative also must prepare a certificate stating: (1) the date on which the entity was first organized, (2) the name of the converting cooperative and, if the name is to be changed, the name of the cooperative to be governed under the new chapter, and (3) the future effective date and time, which must be a date and time certain, that the cooperative will be governed by the new chapter if the effective date and time are not to be the date and time of filing.

Upon filing with the SOS of the articles for compliance with the new chapter and the above certificate, a cooperative organized under R.C. Chapter 1729. is converted and governed by the new chapter unless a later date and time are specified in the certificate. (R.C. 1770.07(B), (C), and (D).)

Effects of conversion

With respect to a conversion as described above, the rights, property, securities, or interests in the converting cooperative may be exchanged or converted into rights, property, securities, or interests in the cooperative as governed by the new chapter. The conversion does not affect any obligations or

liabilities of the cooperative before the conversion or the personal liability of any person incurred before the conversion. When the conversion is effective, the rights, privileges, and powers of the cooperative, real and personal property of the cooperative, debts due to the cooperative, and causes of action belonging to the cooperative remain vested in the cooperative and are the property of the cooperative as converted and governed by the new chapter. Title to real property vested by deed or otherwise in the converting cooperative does not revert and is not impaired by reason of the cooperative's being converted and governed by the new chapter. Rights of creditors and liens on property of the converting cooperative are preserved unimpaired. Debts, liabilities, and duties of the cooperative remain attached to the cooperative as converted and governed by the new chapter and may be enforced against the cooperative to the same extent as if the debts, liabilities, and duties had originally been incurred or contracted by the cooperative as organized under the new chapter. The rights, privileges, powers, and interests in property of the converting cooperative as well as its debts, liabilities, and duties are not deemed, as a consequence of the conversion, to have been transferred for any purpose of the laws of Ohio. (R.C. 1770.07(E) and (F).)

Filing fees

The following are the filing fees paid to the SOS with respect to cooperatives organized under the bill: \$60 for filing the articles of a cooperative; \$500 for filing a curative filing of the articles as described in the second following paragraph; \$35 for all other filings required under R.C. Chapter 1770. (including amendment of the articles and certificate of merger, consolidation, conversion, division, or dissolution). (R.C. 111.16(W) and 1770.08(A).)

When the articles or amendment of the articles or a certificate of merger, consolidation, conversion, division, or dissolution is filed with the SOS and if the articles, amendment, or certificate complies with the bill, the SOS must endorse approval thereon, the date of filing, and a file number, and make a legible copy thereof by any authorized method. The original or a copy of the articles, amendment, or certificate, certified by the SOS, must be returned to the person filing the articles, amendment, or certificate. All persons must have the opportunity to acquire a copy of the filed and recorded articles, amendments, and certificates, but no person dealing with the cooperative is charged with constructive notice of the contents of any such articles, amendments, or certificates by reason of the filing or recording.

If the SOS determines that a filing has been made in error by a cooperative, the SOS may revoke and expunge the erroneous filing and authorize a curative document to be filed. (R.C. 1770.08(B), (C), and (D).)

Duration of cooperative; registered office and statutory agent

The existence of a cooperative commences when the articles are filed with the SOS. A cooperative has a perpetual duration unless the cooperative provides for a limited period of duration in the articles. (R.C. 1770.09.)

A cooperative must establish and continuously maintain in Ohio both a registered office that may be, but need not be, the same as its place of business and a registered statutory agent who may be either an individual resident of Ohio whose business office is identical with the registered office, or a domestic business entity or a foreign business entity authorized to transact business in Ohio and having an office identical with the registered office.

A cooperative may designate or change its registered office or statutory agent, or both, upon filing with the SOS a statement setting forth all of the following: (1) the name of the cooperative, (2) the address of its then registered office, (3) if the address of its registered office is to be changed, the address to which the registered office is to be changed, (4) the name of its then registered statutory agent, (5) if its registered statutory agent is to be changed, the name of its successor registered statutory agent, (6) that the address of its registered office and the address of the business office of its registered statutory agent, as changed, will be identical, and (7) that the change was authorized by affirmative vote of a majority of the cooperative board. If the SOS finds that this statement complies with the above provisions, the SOS must file the statement, and upon filing the change of address of the registered office or the appointment of a new registered statutory agent or both, as applicable, is effective.

A registered statutory agent may resign upon filing one original and one exact or conformed copy of a signed written notice of resignation with the SOS, who must mail a copy to the cooperative at its principal mailing address as defined and prescribed by the SOS. The appointment of the statutory agent terminates upon the expiration of 30 days after the SOS's receipt of notice. If the address or name of a registered statutory agent changes, the statutory agent must change the address of the registered office or the name of the registered statutory agent by filing with the SOS the statement described in the preceding paragraph. The statutory agent must mail a copy of the statement to the cooperative at its principal mailing address. (R.C. 1770.10.)

Biennial registration

In each odd-numbered year, a cooperative governed by the bill must file a biennial registration with the SOS, who is required to establish procedures for the biennial registration, which must include a requirement that the SOS mail by first class mail a registration form to the registered office of each cooperative as shown

in the SOS's records or, if no such address is in the records, to the location of the principal place of business shown in the SOS's records. The form must include the following statement:

"NOTICE: Failure to file this form by December 31 of this year will result in the dissolution of this cooperative without further notice from the Secretary of State under section 1770.11 of the Revised Code."

The biennial registration must include the name of the cooperative, the address of its registered office, the address of its principal place of business if different from the registered office address, and the name and business address of the cooperative's chief executive officer or other person exercising the principal functions of the chief executive officer. (R.C. 1770.11(A), (B), and (C).)

Involuntary dissolution and reinstatement

A cooperative that has failed to file a registration must be dissolved by the SOS. To effectuate the dissolution, the SOS must issue a certificate of involuntary dissolution, which must be filed with the SOS. The SOS annually must inform the Attorney General and the Tax Commissioner in writing of the methods by which the names of cooperatives dissolved under this provision during the preceding year may be determined. The SOS also must make available in an electronic format the names of the dissolved cooperatives.

A cooperative may retroactively reinstate its existence by filing a biennial registration. Filing the biennial registration with the SOS does all of the following: (1) returns the cooperative to active status as of the date of the dissolution, (2) validates contracts or other acts within the authority of the articles and retains the cooperative's liability for those contracts or acts, and (3) restores to the cooperative all assets and rights of the cooperative and its shareholders or members to the extent they were held by the cooperative and its shareholders or members before the dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time. (R.C. 1770.11(D) and (E).)

Bylaws

A cooperative must have bylaws governing the cooperative's business affairs, its structure, the qualifications, classification, rights, and obligations of members, and the classifications, allocations, and distributions of "membership interests" that are not otherwise provided in the articles or the bill (R.C. 1770.12(A)).

Contents

If not stated in the articles, the bylaws must state all of the following (R.C. 1770.12(B)):

- (1) The purpose of the cooperative;
- (2) The capital structure of the cooperative, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed on each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue membership interests, which may be designated to be determined by the board;
- (3) A provision designating the voting and governance rights, including which membership interests have voting power and any limitations or restrictions on the voting power, which must be in accordance with the bill;
- (4) A statement that "patron membership interests" with voting power must be restricted to one vote for each member regardless of the amount of patron membership interests held in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in the bill;
- (5) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws;
- (6) If "nonpatron membership interests" are authorized, a statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively, a statement that net income allocated to a patron membership interest as determined by the board in excess of dividends and additions to reserves must be distributed on the basis of "patronage," and a statement that the cooperative's records must include patron membership interests and, if authorized, nonpatron membership interests, which may be further described in the bylaws.

The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with the bill, any other provision of the Revised Code, or the articles and must include all of the following (R.C. 1770.12(C)):

- (1) The number of directors and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
- (2) The qualifications of members and any limitations on their number;

(3) The manner of admission, withdrawal, suspension, and expulsion of members;

(4) Generally, the governance rights, financial rights, assignability of governance and financial rights, and other rights, privileges, and obligations of members and their membership interests, which may be further described in member control agreements;

(5) Any provisions required by the articles to be in the bylaws.

Adoption and amendment process

Bylaws must be adopted before any distributions to members, but if the articles or bylaws provide that rights of contributors to a class of membership interests will be determined in the bylaws, the bylaws must be adopted before the acceptance of any contributions to that class.

Subject to the provisions described in "**Amendments**," below, the bylaws may be adopted or amended by the directors, or the members may adopt or amend bylaws at a regular or special members' meeting if all of the following apply:

(1) The notice of the regular or special meeting contains a statement that the bylaws or amended bylaws will be voted on and copies are included with the notice, or copies are available upon request from the cooperative, and a summary statement of the proposed bylaws or amendment is included with the notice.

(2) A quorum exists as determined under "**Quorum and participation**," below.

(3) The bylaws or amendment is approved by a majority vote cast, or for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the bylaws or amendment is approved by a proportion of the vote cast or the number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

Until the next annual or special members' meeting, the majority of directors may adopt and amend bylaws for the cooperative that are consistent with the provisions described in "**Amendments**," below, which may be further amended or repealed by the members at an annual or special members' meeting. (R.C. 1770.12(D).)

Amendments

The board may amend the bylaws at any time to add, change, or delete a provision unless the bill, the articles, or the bylaws reserve the power exclusively to the members in whole or in part or a particular bylaw expressly prohibits the board from doing so. An amendment of the bylaws by the board must be distributed to the members not later than ten days after adoption, and the notice of the annual meeting of the members must contain a notice of and a summary of the amendment. The members may amend the bylaws even though the bylaws also may be amended by the board.

The members may amend the bylaws to establish a greater quorum or voting requirement for members, or voting groups of members, than is required under the bill. The members also may amend the bylaws to subsequently reduce or eliminate a greater quorum or voting requirement for members or voting groups of members. An amendment to establish, reduce, or eliminate a greater quorum or voting requirement for members must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be established, whichever are greater. A bylaw that establishes a greater quorum or voting requirement for members under this provision cannot be adopted or amended by the board.

A bylaw that establishes a greater quorum or voting requirement for the board may be amended only: (1) by the members if adopted by the members, or (2) either by the members or by the board if adopted by the board. Action by the board under (2), above, must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be established, whichever are greater.

A bylaw adopted or amended by the members that establishes a greater quorum or voting requirement for the board may provide that it may be amended only by a specified vote of either the members or the board, but if the bylaw is to be amended by a specified vote of the members, the bylaw must be adopted by the same specified vote of the members. (R.C. 1770.12(E), (F), and (G).)

Emergency bylaws

Unless otherwise provided in the articles or bylaws, the board may adopt bylaws to be effective only in an emergency. An emergency exists if a quorum of the directors cannot readily be obtained because of a catastrophic event. The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the cooperative during the

emergency, including procedures for calling a meeting of the board, quorum requirements for the meeting, and designation of additional or substitute directors.

All provisions of the regular bylaws that are consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not effective after the emergency ends. The actions taken in good faith in accordance with the emergency bylaws are binding on the cooperative and may not be the basis for imposition of liability on any director, officer, employee, or statutory agent of the cooperative on the grounds that the action was not authorized cooperative action. (R.C. 1770.12(H).)

Records

A cooperative must keep as permanent records minutes of all meetings of its members and of the board, a record of all actions taken by the members or the board without a meeting by a written unanimous consent in lieu of a meeting, and a record of all waivers of notices of meetings of the members and of the board. A cooperative also must maintain appropriate accounting records. A cooperative must maintain its records in written form or in another form that is capable of conversion into written form within a reasonable time.

A cooperative must keep a copy of each of the following records at its principal office: (1) its articles and other governing instruments, (2) its bylaws or other similar instruments, (3) a record of the names and addresses of its members in a form that allows preparation of an alphabetical list of members with each member's address, (4) the minutes of members' meetings, and records of all actions taken by members without a meeting by unanimous written consent in lieu of a meeting, for the preceding three calendar years, (5) all written communications within the preceding three calendar years to members as a group or to any class of members as a group, and (6) a list of the names and business addresses of its current board members and officers.

Except as otherwise limited by the bill, the cooperative's board has discretion to determine what records are appropriate for the purposes of the cooperative, the length of time that records are to be retained, and policies relating to the confidentiality, disclosure, inspection, and copying of the records. (R.C. 1770.13.)

Powers of cooperative

In addition to other powers, a cooperative may perform every act necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative, has other rights, powers, or privileges granted by the laws of Ohio to other cooperatives, except those that are inconsistent with the bill's

express provisions, and has the powers described above in "Purposes of cooperative" and the powers described below. This provision does not give a cooperative the power or authority to exercise the powers of a credit union under R.C. Chapter 1733. or a bank, savings and loan association, or savings bank under R.C. Title XI. (R.C. 1770.14(A).)

A cooperative has the following specified powers (R.C. 1770.14(B) to (L)):

(1) A cooperative may buy, sell, or deal in its own products, the products of its individual members, "patrons," or nonmembers, the products of another cooperative or an "association" or of its members or patrons, or the products of another person or entity. A cooperative may negotiate the price at which its products may be sold.

(2) A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members.

(3) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange, and convey as a legal entity real, personal, and intellectual property, including real estate, buildings, personal property, patents, and copyrights as the business of the cooperative may require, including the sale or other disposition of assets required by the cooperative's business as determined by the board. A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the cooperative's purposes specified in its articles or bylaws and may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal property. A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way that is legally acquired by the cooperative.

(4) A cooperative may issue bonds, debentures, or other evidence of indebtedness and may borrow money, may secure any of its obligations by mortgage of or creation of a security interest in or other encumbrances or assignment of all or any of its property, franchises, or income, and may issue guarantees for any legal purpose. A cooperative may form special purpose "business entities" to secure assets of the cooperative.

(5) A cooperative may make advances to its members or patrons on products delivered by the members or patrons to the cooperative.

(6) A cooperative may accept donations or deposits of money or real or personal property from other cooperatives or associations from which it is constituted.

(7) A cooperative may loan or borrow money to or from individual members, cooperatives, or associations from which it is constituted with security that it considers sufficient. A cooperative may invest and reinvest its funds.

(8) A cooperative may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the cooperative, employee benefit and incentive plans, trusts, and provisions to or for the benefit of, any or all of its and its related organizations' officers, managers, directors, governors, employees, and statutory agents and, in the case of a related organization that is a cooperative, members who provide services to the cooperative, and any of their families, dependents, and beneficiaries. A cooperative may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of those employee benefit and incentive plans, trusts, and provisions.

(9) A cooperative may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, directors, employees, and statutory agents or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the cooperative owned by the member.

(10) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity or business entities whether organized under the laws of Ohio or another state or the United States and assume all rights, interests, privileges, responsibilities, and obligations arising out of the ownership interests, 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 Ohio or other states. A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in joint capital, and evidences of indebtedness of any domestic business entity or foreign business entity.

(11) A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations, or business entities from which it is constituted.

Actions during emergency

In anticipation of or during an emergency, which exists if a quorum of the directors cannot readily be obtained because of a catastrophic event, a board may modify lines of succession to accommodate the incapacity of any director, officer,

employee, or statutory agent, relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

During an emergency, unless emergency bylaws provide otherwise, both of the following apply:

(1) Notice of a meeting of the board need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication or radio.

(2) One or more officers of the cooperative who are present at a meeting of the board may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

Cooperative action taken in good faith during an emergency to further the ordinary business affairs of the cooperative binds the cooperative and may not be the basis for the imposition of liability on any director, officer, employee, or statutory agent of the cooperative on the grounds that the action was not an authorized cooperative action. (R.C. 1770.15.)

Foreign cooperatives

A "foreign cooperative" may conduct activities in Ohio upon compliance with the general requirements that are applicable to such a cooperative desiring to do business in Ohio. All contracts that may be made by a cooperative under the bill and that are made by or with such a foreign cooperative are enforceable in Ohio with all of the remedies established in the bill. (R.C. 1770.16.)

Marketing contracts

A cooperative and a patron member or patron of the cooperative may make and execute a marketing contract that requires 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. A sale that is contracted to the cooperative must transfer title to the product absolutely, except for any recorded lien or security interest against the agricultural products of the patron member or patron, to the cooperative on delivery of the product or at another specified time if expressly provided in the contract. However, the contract may allow the cooperative to sell or resell the product of its patron member or patron with or without taking title to the product, and pay the resale price to the patron member or patron, after deducting all necessary selling, overhead, and other costs and expenses, including other proper reserves and interest.

A single term of a marketing contract cannot exceed ten years, but a marketing contract may be made self-renewing for periods not exceeding five years each, subject to the right of either party to terminate by giving written notice of the termination during a period of the current term as specified in the contract. (R.C. 1770.17(A) and (B).)

Breach of marketing contract

The cooperative's bylaws or the marketing contract, or both, may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the contract and may provide that the patron member or patron must pay the costs, premiums for bonds, expenses, and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in Ohio courts. The provisions must be enforced as liquidated damages and are not considered a penalty.

If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

The bill prohibits any person from knowingly inducing or attempting to induce a patron member or patron of a cooperative to breach a marketing contract with the cooperative or knowingly spreading false reports about the cooperative's finances or management. Whoever violates this prohibition is guilty of a misdemeanor and must pay a fine of not less than \$100 and not more than \$1,000 for each offense. Each violation constitutes a separate offense. A person may be liable to a cooperative for civil damages for a violation of the prohibition. (R.C. 1770.17(C), (D), (E), and (F) and 1770.99.)

BOARD OF DIRECTORS, COMMITTEES, OFFICERS, INDEMNIFICATION

Board governance

A cooperative is governed by its board, which must take all action for and on behalf of the cooperative, except those actions reserved or granted to members. Board action is the affirmative vote of a majority of the directors voting at a duly called meeting unless a greater majority is required by the articles or bylaws. A director individually or collectively with other directors does not have authority to act for or on behalf of the cooperative unless authorized by the board. A director

may advocate interests of members or member groups to the board, but the fiduciary duty of a director is to represent the best interests of the cooperative and all members collectively. The board cannot have fewer than five directors, except that a cooperative with 50 or fewer members may have three or more directors as prescribed in the articles or bylaws. (R.C. 1770.20.)

Election, allocation of voting authority, term, compensation, and resignation of directors

The organizers of a cooperative must elect the first board to serve until directors are elected by members of the cooperative. Until election by the members, the first board must appoint directors to fill any vacancies. Directors must be elected for the term, at the time, and in the manner provided in the bill and the bylaws. A majority of the directors must be members and elected exclusively by the members holding patron membership interests unless otherwise provided in the articles or bylaws. The voting authority of the directors may be allocated according to allocation units or equity classifications of the cooperative, provided that at least one-half of the voting power on general matters of the cooperative must be allocated to the directors elected by members holding patron membership interests, or in the alternative, the directors elected by the members holding patron membership interests must have an equal or cannot have a minority voting power on general matters of the cooperative.

A director holds office for the term to which the director was elected and until a successor is elected and has qualified to be a director or until earlier death, resignation, removal, or disqualification of the director. The expiration of a director's term with or without election of a qualified successor does not make the prior or subsequent acts of the director or the board void or voidable. Subject to any limitation in the articles or bylaws, the board may set the compensation of directors. Directors may be divided into or designated and elected by class or other distinction as provided in the articles or bylaws. A director may resign by giving written notice to the board or its chair. The resignation is effective without acceptance when the notice is given to the board or its chair unless a later effective time is specified in the notice. (R.C. 1770.21(A) and (B).)

Manner of election

Directors must be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings or special meetings to fill a vacancy, all directors must be elected at the regular members' meeting. There can be no cumulative voting for directors except as provided in the bill and the articles or bylaws.

For a cooperative that has districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings must be elected at the regular members' meeting by vote of the entire membership unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting, or at the regular members' meeting. (R.C. 1770.21(C) and (D).)

The following apply to voting by mail or by "alternative ballot" (R.C. 1770.21(E)):

(1) A member may not vote for a director other than by being present at a meeting or by mail ballot or alternative ballot authorized by the board.

(2) A ballot must be in a form prescribed by the board.

(3) A member must mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name or must vote designating the candidate chosen by alternative ballot in the manner prescribed by the board.

(4) If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting or as otherwise prescribed for alternative ballots, the ballot must be accepted and counted as the vote of the member.

Vacancy or new director position

If a patron member director's position becomes vacant or a new director position is created for a director that was or is to be elected by patron members, the board, in consultation with the directors elected by patron members, must appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting. If there are no directors elected by patron members on the board at the time of the vacancy, a special patron members' meeting must be called to fill the patron member director vacancy.

If a vacating director was not elected by the patron members or a new director position is created, unless otherwise provided in the articles or bylaws, the board must appoint a director to fill the vacant position by majority vote of the remaining or then serving directors even if they constitute less than a quorum. At the next regular or special members' meeting, the members or patron members must elect a director to fill the unexpired term of the vacant director's position. (R.C. 1770.22.)

Removal of director

A director may be removed at any time, with or without cause, if the director was named by the board to fill a vacancy, the members have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal, and a majority of the remaining directors affirmatively vote to remove the director. Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of membership interests entitled to vote at an election of directors, provided that if a director has been elected solely by the patron members or the holders of a class or series of membership interests as stated in the articles or bylaws, that director may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members for a director elected by the patron members or of all membership interests of that class or series entitled to vote at an election of that director. New directors may be elected at a meeting at which directors are removed. These provisions apply unless the articles or bylaws establish different requirements and procedures. (R.C. 1770.23.)

Meetings of board

Meetings of a board may be held from time to time as provided in the articles or bylaws at any place within or without Ohio that the board may select or by any means described in the following paragraph. If the board fails to select a place for a meeting, the meeting must be held at the principal executive office unless the articles or bylaws provide otherwise.

A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting if the same notice concerning the meeting is given as would be required under "**Notice of meeting**," below, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting. A director may participate in a board meeting not described in the preceding sentence by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting. (R.C. 1770.24(A) and (B).)

Notice of meeting

Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of

organizational meetings, at least three days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the bill, the articles, or the bylaws require it. If the day or date, time, and place of a board meeting have been specified in the articles or bylaws or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment occurs.

A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection. (R.C. 1770.24(C), (D), and (E).)

Consent or opposition to proposal at meeting; quorum

If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum. Consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and entered in the minutes or other record of action at the meeting if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

A majority, or a larger or smaller portion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment even though the withdrawal of a number of directors originally present leaves less than the portion or number otherwise required for a quorum. (R.C. 1770.24(F) and (G).)

Actions by board

A board must take action by the affirmative vote of the greater of a majority of directors present at a duly held meeting at the time the action is taken or a majority of the minimum portion or number of directors that would constitute a quorum for the transaction of business at the meeting, except when the bill, the articles, or the bylaws require the affirmative vote of a larger portion or number.

If the articles or bylaws require a larger portion or number than is required by the bill for a particular action, the articles or bylaws control.

An action that is required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles or bylaws so provide, an action, other than an action requiring member approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present. The written action is effective when signed by the required number of directors unless a different effective time is provided in the written action. When written action is permitted to be taken by fewer than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken by the written action. (R.C. 1770.25.)

Committees

A board must establish an audit committee to review the financial information and accounting report of the cooperative. The cooperative must have the financial information audited for presentation to the members unless the bylaws allow financial statements that are not audited and the financial statements clearly state that they are not audited and state the difference between financial statements that are not audited and financial statements that are audited and prepared according to generally accepted accounting procedures. The directors must elect members to the audit committee. The audit committee must ensure an independent review of the cooperative's finances and audit, if any.

A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the cooperative only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the cooperative and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present. The procedures governing meetings of the board apply to committees and members of committees to the same extent as those procedures apply to the board and individual directors. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director. The

establishment of, delegation of authority to, and action by a committee do not alone constitute compliance by a director with the standard of conduct established as described below in "*Duties and powers of directors.*" Committee members are considered to be directors for purposes of the bill's provisions described below in "*Duties and powers of directors,*" "*Contracts with directors,*" and "*Indemnification; advancement of expenses.*" (R.C. 1770.26.)

Duties and powers of directors

A director must discharge the duties of the position of director in good faith, in a manner that the director reasonably believes to be in the best interests of the cooperative, and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the cooperative.

A director may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by: (1) one or more officers or employees of the cooperative whom the director reasonably believes to be *liable* and competent in the matters presented, (2) counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence, or (3) a committee of the board on which the director does not serve, duly established by the board, as to matters within its designated authority if the director reasonably believes the committee to merit confidence. This provision does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by this provision unwarranted.

A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved unless the director: (1) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the director is not considered to be present at the meeting for any purpose of the bill, (2) votes against the action at the meeting, or (3) is prohibited by a conflict of interest from voting on the action.

In discharging the duties of the position of director, a director, in considering the best interests of the cooperative, may consider the interests of the cooperative's employees, customers, suppliers, and creditors, the economy of the state, and long-term as well as short-term interests of the cooperative and its patron members, including the possibility that those interests may be best served by the continued independence of the cooperative. (R.C. 1770.27.)

Contracts with directors

A contract or other transaction between a cooperative and one or more of its directors, or between a cooperative and a business entity in or of which one or more of its directors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other business entities are parties or because the director or directors are present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified if either of the following applies (R.C. 1770.28(A)):

(1) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the cooperative at the time that it was authorized, approved, or ratified and the material facts as to the contract or transaction and as to the director's or directors' interest are disclosed or known to the members and are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors are not counted in determining the presence of a quorum and do not vote.

(2) The contract or transaction is a distribution, contract, or transaction that is made available to all members or patron members as part of the cooperative's business.

If a committee is elected or appointed to authorize, ratify, or approve a contract or transaction, the members of the committee cannot have a conflict of interest and must be charged with representing the best interests of the cooperative (R.C. 1770.28(B)).

For purposes of the above provisions both of the following apply (R.C. 1770.28(C)):

(1) A resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or statutory agent of the cooperative is not void or voidable or considered to be a contract or other transaction between a cooperative and one or more of its directors for purposes of those provisions even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other directors voting on the resolution are also receiving compensation from the cooperative.

(2) A director has a material financial interest in each organization in which the director or the spouse, parents, children, spouses of children, brothers and sisters, spouses of brothers and sisters, and brothers and sisters of the spouse of the director or any combination of them have a material financial interest. A contract or other transaction between a cooperative and the spouse or any of those relatives or any combination of them is considered to be a transaction between the cooperative and the director.

Liability of directors

Generally, a director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles or bylaws. However, the articles or bylaws may not eliminate or limit the liability of a director for any of the following: (1) a breach of the director's duty of loyalty to the cooperative or its members, (2) acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law, (3) knowing violations of securities laws or illegal distributions, (4) a transaction from which the director derived an improper personal benefit, or (5) an act or omission occurring before the date when the provision in the articles or bylaws eliminating or limiting liability becomes effective. (R.C. 1770.29.)

Indemnification; advancement of expenses

For purposes of the provisions described in this part of the analysis, the bill defines the following terms, which are initially italicized in this part of the analysis (R.C. 1770.30(A)):

"Cooperative" includes a domestic or foreign cooperative that was the predecessor of the cooperative referred to in this section (R.C. 1770.30) in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Official capacity" means all of the following:

- (1) With respect to a director, the position of director in a cooperative;
- (2) With respect to a person other than a director, the elective or appointive office or position held by the person, membership on a committee of the board, the employment relationship undertaken by an employee of the cooperative, or the scope of services provided by members of the cooperative to the cooperative;
- (3) With respect to a director, chief executive officer, member, or employee of the cooperative who, while holding such an office or position, is or was serving at the request of the cooperative or whose duties in that office or

position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the office or position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

"Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the cooperative.

Subject to the provision described below in "Articles or bylaws provisions," a cooperative must indemnify a person that is made or threatened to be made a party to a *proceeding* by reason of the former or present *official capacity* of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, all of the following apply to the person (R.C. 1770.30(B)):

(1) The person has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney fees and disbursements incurred by the person in connection with the proceeding, with respect to the same acts or omissions.

(2) The person acted in good faith.

(3) The person received no improper personal benefit, and the person has not committed an act for which liability cannot be eliminated or limited as described above in "Liability of directors."

(4) In the case of a criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

(5) In the case of acts or omissions occurring in the person's official capacity, the person reasonably believed that the conduct was in the best interests of the cooperative or that the conduct was not opposed to the best interests of the cooperative. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the cooperative if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of no contest does not, of itself, establish that the person did not meet the above criteria.

Subject to the provision described below in "Articles or bylaws provisions," if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the cooperative, to payment or reimbursement by the cooperative of reasonable expenses, including attorney's fees and disbursements incurred by the person in advance of the final disposition of the proceeding, if upon receipt by the cooperative of a written affirmation by the person of a good faith belief that the criteria for indemnification (paragraphs (1) to (5), above) have been satisfied, and a written undertaking by the person to repay all amounts paid or reimbursed by the cooperative if it is ultimately determined that the criteria for indemnification have not been satisfied, and after a determination that the facts then known to those making the determination would not preclude indemnification. The written undertaking required in the preceding sentence is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

Articles or bylaws provisions

The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by the bill or may impose conditions on indemnification or advances of expenses in addition to the conditions described above, including, without limitation, monetary limits on indemnification or advances of expenses if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances of expenses may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances of expenses. (R.C. 1770.30(D).)

Determinations regarding indemnification or advances of expenses

All determinations concerning whether indemnification of a person is required and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as described above must be made as follows (R.C. 1770.30(F)):

(1) By a majority of a quorum of the board if the directors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) If a quorum under (1), above, cannot be obtained by a majority of a committee of the board consisting solely of two or more directors not at the time parties to the proceeding duly designated to act in the matter, by a majority of the full board, including directors who are parties;

(3) If a determination cannot be made under (1) or (2), above, by the affirmative vote of the members, but the membership interests held by parties to the proceeding cannot be counted in determining the presence of a quorum, and those members are not considered to be present and entitled to vote on the determination.

Miscellaneous

The provisions on indemnification and payment or reimbursement of expenses do not require or limit the ability of a cooperative to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

A cooperative may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity whether or not the cooperative would have been required to indemnify the person against the liability.

A cooperative that indemnifies or advances expenses to a person in connection with a proceeding by or on behalf of the cooperative must report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next regular members' meeting.

Nothing in the provisions on indemnification and advancement of expenses is to be construed to limit the power of the cooperative to indemnify persons other than a director, chief executive officer, member, employee, or member of a committee of the board of the cooperative by contract or otherwise. (R.C. 1770.30(E), (G), (H), and (I).)

Officers

A board must elect a chair and one or more vice-chairs. The chair and first vice-chair must be directors and members. The board must elect or appoint a records officer and a financial officer. The offices of records officer and financial officer may be combined.

The officers, other than the chief executive officer employed as described in the following paragraph, do not have the authority to bind the cooperative except as authorized by the board. The board may elect or appoint additional

officers as the articles or bylaws authorize or require. The financial officer, records officer, and additional officers need not be directors or members.

The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative, and, if a chief executive officer is employed, the chief executive officer has the authority to implement the functions, duties, and obligations of the cooperative except as restricted by the board. The chief executive officer cannot exercise authority reserved to the board or the members under the bill, the articles, or the bylaws. (R.C. 1770.31.)

MEMBERS, MEMBERS' MEETINGS, VOTING

Members

A cooperative must have one or more members, including one or more patron members. A cooperative may divide members into units, classes, or series as authorized by its articles or bylaws. The board may implement the use of units, classes, or series to elect delegates to members' meetings.

A member who purposely or repeatedly violates a provision of the articles, the bylaws, a member control agreement, or a marketing contract with the cooperative may be required by the board to surrender the member's voting power or the financial rights of membership interest of any class owned by the member, or both. The cooperative must refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of those financial rights payable in not more than seven years from the date of surrender, or the board may transfer all of a patron member's financial rights to a class of financial rights held by members who are not patron members or to a certificate of interest, which carries liquidation rights on par with membership interests and is redeemed within seven years after the transfer as provided in the certificate. Membership interests required to be surrendered may be reissued or be retired and canceled by the board. (R.C. 1770.32.)

A member is not personally liable for the acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative. (R.C. 1770.33.)

Members' meetings

Regular members' meetings must be held annually at a time determined by the board unless otherwise provided for in the bylaws. The regular members' meeting must be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board. The

officers must submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year. All directors must be elected at the regular members' meeting for the terms of office prescribed in the bylaws. However, if the members have been divided into units, classes, or series, the bylaws may allow for the election of a director or directors by unit, class, or series of members. (R.C. 1770.34(A), (B), (C), and (D).)

Special members' meetings may be called by either a majority vote of a quorum of the board or a written petition submitted to the chair of the board by at least 20% of the patron members and, if authorized by the bylaws, 20% of the nonpatron members or members representing 20% of the membership interests collectively (R.C. 1770.35(A)).

Notice of meetings

A cooperative must give notice of regular or special members' meetings by mailing a notice to each member at the member's last known post office address or by other notification approved by the board and agreed to by the members. The notice must be published or otherwise provided by approved method at least two weeks before the date of the meeting or mailed at least 15 days before the date of the meeting. The notice must contain a summary of any bylaw amendments adopted by the board since the last annual meeting. A member may waive notice of a regular or special members' meeting. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting and whether given in writing, orally, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except when the member objects at the beginning of the meeting to the transaction of business because the meeting has not been lawfully called or convened or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting. (R.C. 1770.34(E) and (F) and 1770.35(B).)

After mailing regular or special members' meeting notices or otherwise delivering the notices, a cooperative must create a record containing the date of mailing or delivery of the notices and a statement that the regular or special members' meeting notices were mailed or delivered as prescribed by law. The certificate must be made a part of the record of the meeting. Failure of a member to receive a regular or special members' meeting notice does not invalidate an action taken by the members at a members' meeting. (R.C. 1770.36.)

Quorum and participation

A quorum at a members' meeting that is necessary to transact business is ten per cent of the total number of members for a cooperative with 500 or fewer members and 50 members for cooperatives with more than 500 members. Members may vote by mail or by an alternative ballot. In determining if a quorum exists at a meeting, members present in person or represented by mail vote or an alternative ballot are counted. A quorum must be verified by the chair or the records officer and must be reported in the minutes of the meeting. An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken. (R.C. 1770.37.)

To the extent authorized in the articles or bylaws or a member control agreement, a regular or special members' meeting may be held solely by a combination of means of remote communication through which the members may participate in the meeting if notice of the meeting is given to every owner of membership interests entitled to vote as required by the bill for a meeting and if the membership interests held by the members participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a member by means of remote communication constitutes presence at the meeting in person or by proxy if all the other requirements of the bill for the meeting are met. (R.C. 1770.38.)

Voting

Except when the bill, the articles or bylaws, or a member control agreement requires otherwise, members must take action by the affirmative vote of a majority of the voting power of the membership interests that are part of a quorum and entitled to vote on that item of business. The articles or bylaws may provide for a greater quorum or voting requirement for members or a unit, class, or series of members than is provided for by the bill. An amendment to the articles or bylaws that establishes, reduces, or eliminates a greater quorum or voting requirement must be adopted in accordance with the provisions described above in "*Amendment of articles*" or "*Bylaws*," as applicable. If the articles or bylaws or a member control agreement requires such a larger proportion for a particular action, the articles, bylaws, or member control agreement controls.

In a case where a unit, class, or series of membership interests is entitled by the bill, the articles or bylaws, a member control agreement, or the terms of the membership interests to vote as a unit, class, or series, the matter being voted on also must receive the affirmative vote of the owners of the same proportion of the membership interests present of that unit, class, or series, or of the total outstanding membership interests of that unit, class, or series, as the proportion required as described in the preceding paragraph unless the articles or bylaws or

the member control agreement requires a larger proportion. Unless otherwise stated in the articles or bylaws or a member control agreement, in the case of voting as a unit, class, or series, the minimum percentage of the total voting power of membership interests of the unit, class, or series that must be present is equal to the minimum percentage of all membership interests entitled to vote and required to be present as described in the first paragraph above in "Quorum and participation." (R.C. 1770.39.)

Voting by patron and nonpatron members. The bylaws of a cooperative must require patron members to vote collectively based on the vote of the majority of patron members voting on an issue before the cooperative's members. In no case may the bylaws of a cooperative allow the collective vote of patron members to constitute less than 15% of the total vote of members of the cooperative even if the total patron membership constitutes less than 15% of the total membership of the cooperative. A patron member of a cooperative is entitled to only one vote on an issue to be voted on by members holding patron membership interests, except that if authorized in the articles or bylaws, a patron member may be entitled to additional votes in accordance with the following paragraph. A nonpatron member has voting rights in accordance with the nonpatron member's membership interests as granted in the bylaws, subject to the bill. (R.C. 1770.40(A) and (B).)

A cooperative may authorize in its articles or bylaws patron members to have additional votes concerning any of the following or a combination of them: (1) a stipulated amount of business transacted between a patron member and the cooperative, (2) a stipulated number of patron members in the cooperative, or (3) a stipulated amount of equity allocated to or held by a patron member cooperative in the cooperative's central organization. A cooperative that is organized into units or districts of patron members may authorize in its articles or bylaws the delegates elected by its patron members to have an additional vote for either a stipulated amount of business transacted between the patron members in the units or districts and the cooperative or a stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative, or a combination of them. (R.C. 1770.41.)

Voting by delegates. A cooperative may provide in the articles or bylaws that units, classes, or series of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit, class, or series. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on the basis and with the number of votes prescribed in the articles or bylaws. If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates

must be counted as votes by the members represented by the delegates. (R.C. 1770.40(C).)

Voting membership interests. A board may fix a date of not more than 60 days prior to the date of a members' meeting as the date for the determination of which owners of membership interests are entitled to notice of and to vote at the meeting. The articles or bylaws may establish a shorter period of time for making such a determination. When a date is so fixed, only members on that date are entitled to notice of and to vote at that meeting.

The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote on patron membership interests. Membership interests that are owned by two or more members may be voted by any one of them unless the cooperative receives written notice from any one of them denying the authority of that person to vote those membership interests. Except as described in the following sentence, an owner of a nonpatron membership interest or a patron membership interest with more than one vote that is entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the portion voted in a particular way, the member is considered to have voted all of the membership interest in that way. (R.C. 1770.42.)

Membership interests of a cooperative reflected in the records of the cooperative as being owned by another domestic or foreign business entity may be voted by the chair, the chief executive officer, or another legal representative of that entity. Membership interests of a cooperative in the name of, or under the control of, the cooperative or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the cooperative or, with respect to membership interests in the name of or under control of a subsidiary, the subsidiary binding instructions on how to vote the membership interests. Subject to the provisions described in the first paragraph in "**Voting by patron and nonpatron members**" and "**Voting by delegates**," above, membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, or similar capacity may be voted by the person, either in person or by proxy, without reflecting in the records of the cooperative those membership interests in the name of the person. Membership interests reflected in the records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the records of the cooperative the name of the trustee or receiver if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

The right to vote of trustees in bankruptcy and receivers is subject to the provisions described in the first paragraph in "Voting by patron and nonpatron members" and "Voting by delegates," above. (R.C. 1770.43(A), (B), (C), and (D).)

Membership interests reflected in the records of the cooperative in the name of a business entity not described in the preceding paragraph may be voted either in person or by proxy by the legal representative of that business entity. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote. (R.C. 1770.43(F) and (G).)

Representation by proxy

Patron members may be represented by the proxy of other patron members. Nonpatron members may be represented by proxy if authorized by the bylaws. A member may cast or authorize the casting of a vote by proxy either by filing a written appointment of a proxy with the board at or before the meeting at which the appointment is to be effective or by telephonic transmission or authenticated electronic communication as authorized by the bylaws.

The appointment of a proxy is valid for 11 months unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in a membership interest of the cooperative. An appointment may be terminated at will unless the appointment is coupled with an interest in the cooperative or a membership interest, in which case it cannot be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with the board or by filing a new written appointment of a proxy with the board as described in the preceding paragraph. Termination in either manner revokes all prior proxy appointments and is effective when filed with the board. The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy unless written notice of the death or incapacity is received by the board before the proxy exercises the authority under that appointment.

Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member, both of the following apply: (1) any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment, and (2) if no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determines. If the proxies are equally divided, the membership interests cannot be voted.

Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the cooperative may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment. If a proxy is given authority by a member to vote on fewer than all items of business considered at a members' meeting, the member is considered to be present and entitled to vote by the proxy only with respect to those items of business for which the proxy has authority to vote. (R.C. 1770.44.)

Cooperative holding ownership interests of another entity

A board may direct a cooperative that holds ownership interests of another business entity to elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative's vote at the meeting. (R.C. 1770.45.)

Inspection and copying of records

A member is entitled to inspect and copy, at the member's expense, during regular business hours at a reasonable location specified by the cooperative, any of the records described above in "**Records**" if the member meets the requirements described in paragraphs (1) to (4), below, and gives the cooperative written demand at least five business days prior to the date on which the member wishes to inspect and copy the records. However, no member has the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person or any personnel records or employment records of any employee. In order to be entitled to inspect and copy records, a member must meet the following requirements (R.C. 1770.46(A) and (B)):

(1) The member must have been a member for at least one year immediately preceding the demand to inspect and copy or be a member holding at least 5% of all of the outstanding equity interests in the cooperative as of the date on which the demand is made.

(2) The demand is made in good faith and for a proper cooperative business purpose.

(3) The member describes with reasonable particularity the purpose of the demand to inspect and copy records and describes the records that the member desires to inspect and copy.

(4) The records are directly connected with the described purpose.

The right of inspection and copying cannot be abolished or limited by the articles or bylaws or any actions of the board or the members. The provisions on inspection and copying do not affect either the right of a member to inspect records to the same extent as any other litigant if the member is in litigation with the cooperative or the power of a court to compel the production of the cooperative's records for examination. Notwithstanding any other provision regarding the inspection of records, if the records to be inspected or copied are in active use or storage and not available at the time otherwise provided for inspection or copying, the cooperative must notify the member and set a date and hour within three business days of the date otherwise set in the bill for the inspection or copying. A member's agent or attorney has the same inspection and copying rights as the member. (R.C. 1770.46(C).)

If a cooperative refuses to allow a member, or the member's agent or attorney, to inspect or copy any records, the court of common pleas of the county where the cooperative's principal office is located or, if it has no principal office in this state, the court of common pleas of the county in which its registered office is located, on application of the member, may order the inspection or copying of the records demanded at the cooperative's expense. If a court orders inspection or copying of the records demanded, unless the cooperative proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the member or the member's agent or attorney to inspect or copy the records demanded, the court may do all of the following: (1) order the losing party to pay the prevailing party's reasonable costs, including reasonable attorney fees, (2) order the losing party to pay the prevailing party for any damages that the prevailing party incurred by reason of the subject matter of the litigation, (3) order the cooperative to pay the member's inspection and copying expenses, (4) grant either party any other remedy provided by law, and (5) impose reasonable restrictions on the use or distribution of the records by the demanding member. (R.C. 1770.46(D).)

MEMBERSHIP INTERESTS

Issuance and transfer of membership interests

The authorized amount and divisions of patron membership interests and, if authorized, nonpatron membership interests may be increased, decreased, established, or altered in accordance with the restrictions in the bill by amending the articles or bylaws at a regular members' meeting or at a special members' meeting called for the purpose of the amendment. Authorized membership interests may be issued on terms and conditions prescribed in the articles or bylaws or, if authorized in the articles or bylaws, as determined by the board. The

cooperative must disclose to any person or entity acquiring membership interests to be issued by the cooperative the organization, capital structure, and known business prospects and risks of the cooperative as well as the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative must notify all members of the membership interests being issued by the cooperative. A membership interest may not be issued until the subscription price of the membership interest has been paid in money or property with the value of the property to be contributed approved by the board.

The patron membership interests collectively must have not less than 60% of the cooperative's financial rights to profit allocations and distributions. However, if authorized in the original articles as filed, articles or bylaws adopted by an affirmative vote of the patron members, or articles or bylaws as amended by an affirmative vote of patron members, the cooperative's financial rights to profit allocations and distributions to patron members collectively may be not less than 15%.

After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred with the approval of the board. The board may adopt resolutions prescribing procedures to prospectively approve transfers. (R.C. 1770.50(A), (B), (C), and (D).)

If authorized by the articles, the cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed in the articles or bylaws or by separate disclosure to the members. A member acquiring nonpatron membership interests must sign a member control agreement or agree to the conditions in the bylaws, either of which must describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocations of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the articles or bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively must be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent that the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative must be allocated among the membership interests as provided in the articles and bylaws, subject to the bill. If not otherwise provided in the articles or bylaws, distributions must be made on the basis of value of the capital

contributions of the patron membership interests collectively and the nonpatron membership interests to the extent that the contributions have been accepted by the cooperative.

The articles or bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of membership interests offered for sale. A membership interest acquired by the cooperative may be held in order to be reissued or may be retired and canceled. (R.C. 1770.50(E) and (F).)

Dissenting member

Subject to the articles and bylaws, a member may dissent from and obtain payment for the fair value of the member's nonpatron membership interests in the cooperative if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences of the nonpatron membership interests of the dissenting member. The dissenting member must file a notice of intent to demand fair value of the membership interest with the cooperative's records officer within 30 days after the amendment of the articles or bylaws and notice of the amendment to members. If the dissenting member fails to do so within the 30-day period, or if the dissenting member voted in favor of the amendment, the right of the dissenting member to demand payment of fair value for the membership interest is waived. After receipt of the dissenting member's notice, the cooperative either must rescind the amendment not later than 60 days after receipt of the notice or remit payment for the fair value of the membership interest to the dissenting member not later than 180 days after receipt of the notice. Upon receipt of payment for the fair value of the membership interest, the member has no further member rights in the cooperative. (R.C. 1770.50(G).)

Transferability of financial rights

Except as described in the following paragraphs, a member's financial rights are transferable in whole or in part. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the cooperative and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the cooperative, or to cause dissolution. The assignment cannot allow the assignee to control the member's exercise of governance or voting rights.

A restriction on the assignment of financial rights may be imposed in the articles, in the bylaws, in a member control agreement, by a resolution adopted by the members, by an agreement among or other written action by the members, or

by an agreement among or other written action by the members and the cooperative. A restriction is not binding with respect to financial rights reflected in the records of the cooperative before the adoption of the restriction unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction. A written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the records of the cooperative may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the records of the cooperative, a restriction, even though permitted by the bill, is ineffective against a person without knowledge of the restriction.

With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the cooperative as described below in "*Nature of membership interests*." A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest, but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement. Notwithstanding any provision of law, articles, bylaws, member control agreement, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with applicable law, without the consent or approval of the member whose financial rights are subject to the security interest. (R.C. 1770.51.)

Nature of membership interests

A membership interest is personal property. A member has no interest in specific cooperative property. All property of the cooperative is property of the cooperative itself. At the request of a member, the cooperative must state in writing the particular membership interest owned by that member as of the date on which the cooperative issues the statement. The statement must describe the member's rights to vote, if any, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights as described above in "*Transferability of financial rights*," or voting rights under the bill then in effect as well as any assignment of the member's rights then in effect other than a security interest.

All the membership interests of a cooperative must: (1) be of one class, without series, unless the articles or bylaws establish or authorize the board to establish more than one class or series within classes, (2) be ordinary patron membership interests or, if authorized in the articles or bylaws, nonpatron membership interests subject to the bill, entitled to vote as provided in the bill, and

have equal rights and preferences in all matters not otherwise provided for by the board and to the extent that the articles or bylaws have fixed the relative rights and preferences of different classes and series, and (3) share profits and losses and are entitled to distributions as provided in the bill. (R.C. 1770.52(A), (B), and (C).)

Judgment creditor's remedy

On application to a court of competent jurisdiction by a judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights described above in "**Transferability of financial rights.**" The bill does not deprive a member or assignee of financial rights of the benefit of any exemption laws that are applicable to the membership interest. This provision is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest. (R.C. 1770.52(D).)

Class or series of membership interests

Subject to any restrictions in the articles or bylaws, the power granted in this provision may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles or bylaws or by resolution of the board may do both of the following (R.C. 1770.52(E)):

(1) Be made dependent on facts ascertainable outside the articles or bylaws or outside the resolution or resolutions establishing the class or series if the manner in which the facts operate on the rights and preferences of the class or series is clearly and expressly set forth in the articles or bylaws or in the resolution or resolutions establishing the class or series;

(2) Include by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the cooperative in connection with the establishment of the class or series if the cooperative retains at its principal executive office a copy of the agreements, contracts, or other arrangements.

A statement setting forth the name of the cooperative and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be given to the members before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles or bylaws. When the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles or bylaws before the acceptance of the contributions with respect to the membership interests, the

statement may be filed any time within one year after the acceptance of the contributions. The resolution is effective three days after delivery of the notice to the members.

Without limiting the authority granted in this section, a cooperative may have membership interests of a class or series: (a) subject to the right of the cooperative to redeem any of those membership interests at the price fixed for their redemption by the articles or bylaws or by the board, (b) entitling the members to cumulative, partially cumulative, or noncumulative distributions, (c) having preference over any class or series of membership interests for the payment or distributions of any or all kinds, (d) convertible into membership interests of any other class or any series of the same or another class, and (e) having full, partial, or no voting rights. (R.C. 1770.52(E) and (F).)

Powers of member's legal representative

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the statutes governing bankruptcy is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a business entity, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor. If an event referred to in this paragraph causes the termination of a member's membership interest and the termination does not result in dissolution, the terminated member's interest, subject to the articles and bylaws, must be considered to be merely that of an assignee of the financial rights owned before the termination of membership, and the rights to be exercised by the legal representative of the terminated member must be limited accordingly. (R.C. 1770.52(G).)

Subscriber for membership interests

A subscriber for membership interests or a member of a cooperative is under no obligation to the cooperative or its creditors with respect to the membership interests subscribed for or owned, except to pay to the cooperative the full consideration for which the membership interests are issued or to be issued (R.C. 1770.52(H)).

Certificated or uncertificated membership interests

The membership interests of a cooperative must be either certificated or uncertificated. A holder of certificated membership interests is entitled to a

certificate of membership interests. Certificates must be signed by a statutory agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by the chair or records officer of the cooperative. If a person signs or has a facsimile signature placed on a certificate while the chair or an officer, transfer agent, or records officer of a cooperative, the certificate may be issued by the cooperative, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity on the date of its issue. A certificate that is signed as described in this paragraph is prima-facie evidence of the ownership of the membership interests referred to in the certificate.

A certificate of membership interests of a cooperative must contain on its face all of the following: (1) the name of the cooperative, (2) a statement that the cooperative is organized under the laws of Ohio and R.C. Chapter 1770., (3) the name of the person to whom the certificate is issued, (4) the number and class of membership interests, and the designation of the series, if any, that the certificate represents, (5) a statement that the membership interests in the cooperative are subject to the articles and bylaws, and (6) any restrictions on transfer, including approval of the board, if applicable, first rights of purchase by the cooperative, and other restrictions on transfer, which may be stated by reference to the back of the certificate or to another document.

A certificate of membership interests issued by a cooperative that is authorized to issue membership interests of more than one class or series must state on the face or back of the certificate that the cooperative will furnish to any member upon request and without charge a full statement of the designations, preferences, limitations, and relative rights of the membership interests of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series. (R.C. 1770.53(A), (B), (C), and (D).)

Unless uncertificated membership interests are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its membership interests will be uncertificated membership interests. The resolution does not apply to membership interests represented by a certificate until the certificate is surrendered to the cooperative. Within a reasonable time after the issuance or transfer of uncertificated membership interests, the cooperative must send to the new member the information required by the above provisions to be stated on certificates. The information is not required to be sent to the new holder by a publicly held cooperative that has adopted a system of issuance, recordation, and transfer of its membership interests by electronic or other means not involving an issuance of certificates if the system complies with section 17A of the

"Securities Exchange Act of 1934," 15 U.S.C. 78a. Except as otherwise expressly provided in the Revised Code, the rights and obligations of the holders of certificated and uncertificated membership interests of the same class and series are identical. (R.C. 1770.53(E).)

A new certificate of membership interests may be issued in place of one that is alleged to have been lost, stolen, or destroyed. The issuance of a new certificate under this provision does not constitute an overissue of the membership interests that it represents. (R.C. 1770.54.)

Restriction on transfer of membership interests

A restriction on the transfer or registration of transfer of membership interests of a cooperative may be imposed in the articles, in the bylaws, by a resolution adopted by the members, or by an agreement among or other written action by a number of members or holders of other membership interests or among them and the cooperative. A restriction is not binding with respect to membership interests issued prior to the adoption of the restriction unless the holders of those membership interests are parties to the agreement or voted in favor of the restriction.

A written restriction on the transfer or registration of transfer of membership interests of a cooperative that is not manifestly unreasonable under the circumstances may be enforced against the holder of the restricted membership interests or the holder's successor or transferee, including a pledgee or a legal representative, if the restriction is either noted conspicuously on the face or back of the certificate, established in the bill or the articles or bylaws, or included in information sent to the holders of uncertificated membership interests. A restriction that is not so noted, established, or included, even though permitted by this provision, is ineffective against a person without knowledge of the restriction. A restriction is determined to be noted conspicuously on a certificate and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction. (R.C. 1770.55.)

Member control agreements

A written agreement among persons who are then members, including a sole member, or who have signed subscription or contribution agreements, relating to the control of any phase of the business and affairs of the cooperative, its liquidation, dissolution, and termination, or the relations among members or persons who have signed subscription or contribution agreements is valid as described in the following paragraph. Whenever R.C. Chapter 1770. provides that a particular result may or must be obtained through a provision in the articles or

bylaws, the same result may be accomplished through a member control agreement valid under this provision or through a procedure established by a member control agreement valid under this provision.

Other than patron member voting control described above in "**Voting by patron and nonpatron members,**" and patron member allocation and distributions as described below in "**Allocation of profits and losses; distributions**" and "**Reserves; allocation of net income,**" a written agreement among persons described in the preceding paragraph that relates to the control of or the liquidation, dissolution, and termination of the cooperative; the relations among members or other persons; or any phase of the business and affairs of the cooperative, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of directors, the employment of members by the cooperative, or the arbitration of disputes, is valid if the agreement is signed by all persons who are then members of the cooperative, whether or not the members all have voting power, and all those who have signed contribution agreements regardless of whether those signatories will, when members, have voting power.

The above provisions do not apply to, limit, or restrict agreements otherwise valid, nor is the procedure established in those provisions the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described in those provisions. (R.C. 1770.56.)

MEMBERSHIP CONTRIBUTIONS, MEMBERSHIP DISTRIBUTIONS

Membership contributions

Subject to any restrictions in the bill regarding patron and nonpatron membership interests or in the articles or bylaws, and only when authorized by the board, a cooperative may accept contributions, which may be patron or nonpatron membership contributions as determined by the board as described in the following paragraph, make contribution agreements as described below in "**Contribution agreements,**" and make contribution allowance agreements as described below in "**Contribution rights agreements.**"

A person may make a contribution to a cooperative by paying money or transferring the ownership of an interest in property to the cooperative or performing services to or for the benefit of the cooperative or through a written obligation signed by the person to pay money or transfer ownership of an interest in property to the cooperative or to perform services to or for the benefit of the cooperative. No purported contribution is to be treated as or considered to be a contribution unless both of the following apply: (1) the board accepts the

contribution on behalf of the cooperative and in that acceptance describes the contribution, including terms of future performance, if any, and states the value being accorded to the contribution, and (2) the fact of contribution and the contribution's accorded value are both reflected in the records of the cooperative.

The determinations of the board as to the amount or fair value or the fairness to the cooperative of the contribution accepted or to be accepted by the cooperative or the terms of payment or performance, including under a contribution agreement and a contribution allowance agreement (see "Contribution agreements" and "Contribution rights agreements," below) are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors who are present and entitled to vote and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the cooperative, or overvalue property or services received or to be received by the cooperative as a contribution, are jointly and severally liable to the cooperative for the benefit of the then members who did not consent to and are damaged by the action to the extent of the damages to those members. A director against whom a claim is asserted under this provision, except in a case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors who are liable under this provision. (R.C. 1770.60.)

Restatement of value of old contributions

As used in the following provisions, "old contribution" means a contribution that is reflected in the records of a cooperative before the time at which the cooperative accepts a new contribution.

When a cooperative accepts a new contribution, the board must restate the value of all old contributions. (R.C. 1770.61(A) and (B).) A cooperative must restate the value of old contributions that pertain to the same series or class to which a new contribution pertains in accordance with this provision unless otherwise provided in the articles or bylaws. To restate the value, a cooperative must do all of the following (R.C. 1770.61(C)):

(1) State the value that the cooperative has accorded to the new contribution as described above in (1) and (2) in the 2nd paragraph under "Membership contributions";

(2) Determine what percentage that value will constitute, after the restatement, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

(3) Divide the value stated in (1), above, by the percentage determined under (2), above, yielding the total value, after the restatement, of all contributions pertaining to the particular series or class;

(4) Subtract the value stated in (1), above, from the value determined under (3), above, yielding the total value, after the restatement, of all the old contributions pertaining to the particular series or class;

(5) Subtract the value, as reflected in the records of the cooperative before the restatement, of the old contributions from the value determined under (4), above, yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class;

(6) Allocate the value determined under (5), above, proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the records of the cooperative accordingly.

The values determined under (5), above, and allocated and added under (6), above, may be positive, negative, or zero.

A cooperative must restate the value of old contributions that do not pertain to the same series or class to which a new contribution pertains in accordance with this provision unless otherwise provided in the articles or bylaws. To restate the value, a cooperative must do both of the following: (a) determine the percentage by which the restatement described in (1) to (6), above, has changed the total contribution value reflected in the records of the cooperative for the series or class to which the new contribution pertains, and (b) for each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the records of the cooperative by the percentage determined under (a). The percentage determined under (a), above, may be positive, negative, or zero.

If a cooperative accepts more than one new contribution pertaining to the same series or class at the same time, the cooperative may consider all the new contributions to be a single contribution for the purpose of the restatement required by the above provisions. (R.C. 1770.61(D) and (E).)

Contribution agreements

A contribution agreement, whether made before or after the formation of the cooperative, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor. Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in

existence, the cooperative consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months. A contribution agreement, whether made before or after the formation of a cooperative, must be paid or performed in full at the time or times or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board, but a call made by the board for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series. (R.C. 1770.62(A), (B), and (C).)

Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the cooperative may proceed to collect the amount due in the same manner as a debt due the cooperative. If a would-be contributor does not make a required contribution of property or services, the cooperative must require the would-be contributor to contribute cash equal to that portion of the value, as stated in the records of the cooperative, of the contribution that has not been made. If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the cooperative for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale. If the membership interests that were subject to the contribution agreement are sold, the cooperative must pay to the delinquent would-be contributor or to the delinquent would-be contributor's legal representative the lesser of the following: (1) the excess of net proceeds realized by the cooperative over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale less any penalty stated in the contribution agreement, which may include forfeiture of the partial contribution, or (2) the amount actually paid by the delinquent would-be contributor.

If the membership interests that were subject to the contribution agreement are not sold as described in the preceding paragraph, the cooperative may collect the amount due in the same manner as a debt due the cooperative or cancel the contribution agreement. If the amount due under a contribution agreement remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the contribution agreement have not been sold, the cooperative may cancel the contribution agreement, the cooperative may retain any portion of the contribution agreement price actually paid as provided in the contribution agreement, and the cooperative must refund to the delinquent would-

be contributor or the delinquent would-be contributor's legal representatives any portion of the contribution agreement price as provided in the contribution agreement. (R.C. 1770.62(D).)

Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment unless all the members approve the assignment by unanimous written consent (R.C. 1770.62(E)).

Contribution rights agreements

Subject to any restrictions in the articles or bylaws, a cooperative may enter into contribution rights agreements under the terms, provisions, and conditions fixed by the board. Any contribution rights agreement must be in writing and state in full, summarize, or include by reference all the agreement's terms, provisions, and conditions of the rights to make contributions. Unless otherwise provided in the articles or bylaws, a would-be contributor's rights under a contribution rights agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment unless all the members approve the assignment by unanimous written consent. (R.C. 1770.63.)

Allocation of profits and losses; distributions

The bylaws must prescribe the allocation of profits and losses between patron membership interests collectively and any other membership interests. If the bylaws do not provide otherwise, the profits and losses between patron membership interests collectively and other membership interests must be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively cannot be less than 50% of the total profits in any fiscal year, except that if authorized in the original articles as filed, in the articles or bylaws that are adopted by the affirmative vote of the patron members, or in the articles or bylaws that are amended by the affirmative vote of the patron members, the allocation of profits to the patron membership interests collectively cannot be less than 15% of the total profits in any fiscal year.

The bylaws must prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If the bylaws do not provide otherwise, distribution must be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative, by the patron membership interests collectively, and by other membership interests. The distributions to

patron membership interests collectively cannot be less than 50% of the total distributions in any fiscal year, except that if authorized in the articles or bylaws that are adopted by the affirmative vote of the patron members or in the articles or bylaws that are amended by the affirmative vote of the patron members, the distributions to patron membership interests collectively cannot be less than 15% of the total distributions in any fiscal year. (R.C. 1770.64.)

Reserves; allocation of net income

A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve. In addition to a capital reserve, the board, for patron membership interests, may set aside an amount not to exceed 5% of the annual net income of the cooperative for promoting and encouraging cooperative organization, or establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

Net income allocated to patron members in excess of dividends on equity and additions to reserves must be distributed to patron members on the basis of patronage. A cooperative may establish allocation units that are functional, divisional, departmental, geographic, or otherwise and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements. Distribution of net income must be made at least annually. The board must present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year. A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities. The cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate of interest, the patron may participate in the distribution of income on the same basis as a patron member. (R.C. 1770.65.)

MERGER OR CONSOLIDATION, DISPOSITION OF ASSETS, DISSOLUTION

Merger or consolidation

Unless otherwise prohibited, a cooperative may merge or consolidate with one or more business entities if the merger or consolidation is permitted by the laws under which each constituent entity exists and the cooperative complies with the following provisions. To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation must be prepared by the board or by a committee selected by the board to prepare a plan. The plan must state all of the following: (1) the names of the cooperative or cooperatives and other business entities that are parties to the merger, (2) the name of the surviving or new cooperative or other business entity, (3) the manner and basis of converting membership or ownership interests in the cooperative and other business entities into membership or ownership interests in the surviving or new cooperative or other business entity, (4) the terms of the merger or consolidation, and (5) the proposed effect of the consolidation or merger on the members and patron members of each constituent cooperative and business entity. With respect to a consolidation, the plan also must contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized.

The board must mail or otherwise transmit or deliver notice of the merger or consolidation to each member. The notice must contain the full text of the plan and the time and place of the meeting at which the plan will be considered. A cooperative with more than 200 members may provide the notice in the same manner as a regular members' meeting notice.

A plan of merger or consolidation must be adopted by a cooperative if a quorum of the members exists as described above in "Quorum and participation," and the plan is approved by the patron members or, if otherwise provided in the articles or bylaws, by a majority of the votes cast in each class of votes cast, or, for a cooperative with articles or bylaws requiring more than a majority of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or the number of members required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied. After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this provision must be signed by the chair, vice-chair, records officer, or documents officer of each constituent cooperative or business entity.

For a merger, the articles of the surviving cooperative are deemed amended to the extent provided in the articles of merger. Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or



consolidation are filed as described below in "*Filing of articles of merger or consolidation.*" (R.C. 1770.70.)

Amendment or abandonment of plan of merger or consolidation

After a plan of merger or consolidation has been approved as described above in "*Merger or consolidation.*" but before the effective date of the merger or consolidation, the plan may be amended or abandoned by the same vote that approved the plan. If the merger or consolidation is amended or abandoned as provided, an authorized officer of each constituent cooperative and business entity must sign a certificate of amendment or abandonment stating that the plan of merger or consolidation has been amended or abandoned and the date of that action and must file the certificate in the same manner as the articles of merger or consolidation described below in "*Filing of articles of merger or consolidation.*" The certificate must be filed prior to the date on which the merger or consolidation would otherwise be effective. (R.C. 1770.71.)

Filing of articles of merger or consolidation

Upon adoption of a plan of merger or consolidation, the signed articles of merger or consolidation must be filed with the SOS on a form prescribed by the SOS that sets forth the following (R.C. 1770.72(A)):

- (1) The name and form of each constituent cooperative or business entity and the state law under which each constituent cooperative or business entity exists;
- (2) A statement that each constituent cooperative or business entity has adopted the plan of merger or consolidation, including the manner of adoption, and that the plan was adopted in compliance with the laws applicable to each constituent cooperative or business entity;
- (3) The effective date of the merger or consolidation, which date may be on or after the date of filing of the articles;
- (4) In the case of a merger, a statement that one or more specified constituent cooperatives or business entities will be merged into a specified surviving cooperative or business entity, or, in the case of a consolidation, a statement that the constituent cooperatives or business entities will be consolidated into a new cooperative or business entity;
- (5) The name and address of the statutory agent on whom any process, notice, or demand against any constituent cooperative or business entity, or the surviving or new cooperative or business entity, may be served.

In the case of a merger into a cooperative or business entity, any amendments to the articles of incorporation or the articles of organization of the surviving cooperative or business entity must be filed with the articles of merger or consolidation. In the case of a consolidation to form a new cooperative or business entity, the articles of incorporation or the articles of organization of the new cooperative or business entity must be filed with the articles of merger or consolidation.

If the surviving or new entity is a foreign entity that desires to transact business in Ohio as a foreign entity, the articles of merger or consolidation must be accompanied by the information required for qualification of a foreign entity in this state by R.C. Chapter 1703., in the case of a foreign corporation or foreign cooperative, or by R.C. 1705.53 and 1705.54, in the case of a foreign limited liability company.

A copy of the articles of merger or consolidation, certified by the SOS, may be filed for record in the office of the county recorder of any county in Ohio. For the recording the county recorder must charge and collect the same fee as in the case of deeds. The certified copy of the articles of merger or consolidation must be recorded in the records of deeds. (R.C. 1770.72(B), (C), and (D).)

Disposition of assets

A cooperative, by affirmative vote of a majority of the board present, on terms and conditions and for considerations, which may be money, securities, or other instruments for the payment of money or other property, that the board considers expedient and without member approval, may do any of the following (R.C. 1770.80(A)):

(1) Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets not in the usual and regular course of its business if all of the following apply: (a) the cooperative's accountant has given an opinion that the cooperative cannot continue as an ongoing business and the cooperative is under financial duress, (b) the cooperative has given notice to the members of the impending or potential disposition prior to the disposition, and (c) the board has determined that failure to proceed with the disposition would be adverse to the interests of the members and the cooperative.

(3) Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;

(4) Transfer any or all of its property to a business entity all the ownership interests of which are owned by the cooperative;

(5) For purposes of debt financing, transfer any or all of its property to a special purpose entity owned or controlled by the cooperative for an asset securitization.

Except as described in the preceding paragraphs, a cooperative, by affirmative vote of a majority of the board present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, on terms and conditions and for considerations, which may be money, securities, or other instruments for the payment of money or other property, that the board considers expedient when approved at a members' meeting by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.

Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current chair of the board or authorized agents.

The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by law. (R.C. 1770.80(B), (C), and (D).)

Voluntary dissolution--resolution of dissolution and certificate of dissolution

A cooperative may be dissolved voluntarily in the following manner. A resolution of dissolution of a cooperative must state both that the cooperative elects to be dissolved and any additional provision considered necessary with respect to the proposed dissolution and winding up. (R.C. 1770.81(A) and (B).) The directors may adopt a resolution of dissolution in the following cases (R.C. 1770.81(C)):

(1) When the cooperative has been adjudged bankrupt or has made a general assignment for the benefit of creditors;

(2) By leave of the court, when a receiver has been appointed in a general creditors' suit or in any suit in which the affairs of the cooperative are to be wound up;

(3) When substantially all of the assets have been sold at judicial sale or otherwise;

(4) When the period of existence of the cooperative specified in its articles has expired.

At a meeting held for that purpose, the members may adopt a resolution of dissolution by the affirmative vote of 60% of the member votes cast on the proposal or, if the articles or bylaws provide or permit, by the affirmative vote of a greater or lesser portion though not less than a majority, of the voting power, of any particular class as required by the articles or bylaws. Notice of the meeting must be provided to the members as required by the bill. Upon the adoption of a resolution of dissolution, a certificate must be filed with the SOS, on a form prescribed by the SOS, stating all of the following: (a) the name of the cooperative, (b) a statement that a resolution of dissolution has been adopted, including the manner of adoption, and, in the case of its adoption by directors, a statement of the basis for the adoption, (c) the place where the cooperative's principal executive office is located, (d) the names and addresses of the cooperative's directors and officers, and (e) the name and address of the cooperative's statutory agent.

When a resolution of dissolution is adopted by the directors or by the members, the required certificate as described in the preceding paragraph must be signed by an authorized officer. However, if no authorized officer executes and files the certificate within 30 days after the adoption of the resolution or on any date specified in the resolution as the date on which the certificate is to be filed or upon the expiration of any period specified in the resolution as the period within which the certificate is to be filed, whichever is latest, the certificate of dissolution may be signed by three members or, if there are fewer than three members, by all of the members and must include a statement that the persons signing the certificate are members and are filing the certificate because of the failure of an authorized officer to do so. (R.C. 1770.81(D), (E), and (F).)

Filing of certificate of dissolution; notice of voluntary dissolution

A certificate of dissolution, filed with the SOS, must be accompanied by all of the following (R.C. 1770.81(G)):

(1) An affidavit of one or more of the persons executing the certificate of dissolution or of an authorized officer of the cooperative containing a statement of the counties, if any, in Ohio in which the cooperative has personal property or a statement that the cooperative is of a type that is required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all sales, use, highway use, and other applicable taxes accruing up to the date of the filing or that payment adequately has been guaranteed;

(3) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of the filing;

(4) A receipt, certificate, or other evidence from the Director of Job and Family Services showing that all contributions due from the cooperative as an employer have been paid, that payment adequately has been guaranteed, or that the cooperative is not subject to such contributions;

(5) A receipt, certificate, or other evidence from the Bureau of Workers' Compensation showing that all premiums due from the cooperative as an employer have been paid, that payment adequately has been guaranteed, or that the cooperative is not subject to such premium payments.

Upon the filing of a certificate of dissolution and the accompanying documents described in (1) to (5), above, the cooperative is dissolved (R.C. 1770.81(H)).

Following the filing of a certificate of dissolution, the directors or members who filed the certificate, as the case may be, must cause a notice of voluntary dissolution to be published once a week on the same day of each week for two successive weeks in a newspaper that is published and of general circulation in the county in which the principal executive office of the cooperative was or is located and must cause written notice of the dissolution to be given to all known creditors of, and to all known claimants against, the dissolved cooperative. (R.C. 1770.82.)

Winding up of cooperative's affairs

When a cooperative is dissolved voluntarily, when the articles of organization of a cooperative have been canceled, when a final order of a court of common pleas is made dissolving a cooperative as described below in "**Special court proceeding for winding up cooperative's affairs**," or when the period of existence of a cooperative specified in its articles of organization has expired, the cooperative must cease to carry on business and must do only those acts that are required to wind up its affairs. Any claim existing or action or proceeding pending by or against the cooperative or that would have accrued against it may be prosecuted to judgment, with right of appeal as in other cases, but any proceeding, execution, or process, or the satisfaction or performance of any order, judgment, or decree, may be stayed as described below in "**Special court proceeding for winding up cooperative's affairs**." Any process, notice, or demand against the cooperative may be served by delivering a copy to an officer, director, liquidator,

or person having charge of its assets or, if no such person can be found, to the statutory agent.

The directors of the cooperative or their successors must act as the board of directors in accordance with the articles of organization and bylaws until the cooperative's affairs are completely wound up. Subject to the orders of Ohio courts having jurisdiction over the cooperative, the directors must proceed as speedily as is practicable to a complete winding up of the affairs of the cooperative and, to the extent necessary or expedient to that end, must exercise all the authority of the cooperative. Without limiting the generality of that authority, the directors may fill vacancies; elect officers; carry out contracts of the cooperative; make new contracts; borrow money; mortgage or pledge the property of the cooperative as security; sell its assets at public or private sale; make conveyances in the cooperative's name; lease real estate for any term, including 99 years renewable forever; settle or compromise claims in favor of or against the cooperative; appoint or employ one or more persons as liquidators to wind up the affairs of the cooperative with authority that the directors see fit to grant; cause the title to any of the cooperative's assets to be conveyed to those liquidators for that purpose; apply assets to the payment of obligations; and, after paying or adequately providing for the payment of all known obligations of the cooperative, distribute the remainder of the assets either in cash or in kind among the members or patrons according to their respective rights and interests. In addition, the directors may perform all other acts that are necessary or expedient to the winding up of the affairs of the cooperative. (R.C. 1770.83(A), (B), (C), and (D).)

The directors, or any liquidator to whom the directors grant such authority, in the course of winding up the cooperative's affairs, must apply the cooperative's assets in the following order: (1) to expenses that are incidental to winding up the cooperative's affairs, (2) to all legally enforceable liabilities and obligations of the cooperative that are due claimants and creditors, and (3) to the cooperative's members and patrons as provided in its articles or bylaws.

Without limiting the authority of the directors, any action within the purview of these winding up provisions that is authorized or approved at a meeting of the members by 60% of the member votes cast are conclusive for all purposes on all members or patrons of the cooperative. All deeds and other instruments of the cooperative must be in the name of the cooperative and executed, acknowledged, and delivered by the officers appointed by the directors.

At any time during the winding up of its affairs, the cooperative by its directors may apply to the court of common pleas of the county in Ohio in which the principal executive office of the cooperative is located to have the winding up continued under supervision of the court as described below in "*Special court proceeding for winding up cooperative's affairs.*" However, if the cooperative

has no principal executive office in Ohio, the application may be made to a court of common pleas in the county in Ohio where the statutory agent resides. (R.C. 1770.83(E), (F), (G), and (H).)

Special court proceeding for winding up cooperative's affairs

The court of common pleas of the county in Ohio in which is located the principal executive office of a voluntarily dissolved cooperative or of a cooperative whose period of existence has expired, upon the complaint of the cooperative, or a majority of the directors, or 10% of the members or 20 members, whichever is less, and upon notice to all the directors and other interested persons that the court considers proper, at any time may order and adjudge any of the matters described in (1) to (10), below. If the cooperative has no principal executive office in Ohio, without limiting the generality of its authority, the court of common pleas in the county in Ohio where the statutory agent resides may order and adjudge these matters (R.C. 1770.84(A) and (B)):

(1) The presentation and proof of all claims and demands against the cooperative and of all rights, interests, or liens in or on any of its property; the fixing of the time and the manner in which such proof must be made and the person to whom presentation must be made; and the barring from participation in any distribution of assets of all persons failing to make and present proofs as required by the order of the court;

(2) The stay of the prosecution of any proceeding against the cooperative or involving any of its property; the requirement that the parties to the proceeding present and prove their claims, demands, rights, interests, or liens at the time and in the manner required of creditors or others; or the grant of leave to bring or maintain an independent proceeding to enforce liens;

(3) The settlement or determination of all claims of every nature against the cooperative or any of its property; the determination of the assets required to be retained to pay or provide for the payment of such claims or any claim; the determination of the assets available for distribution among and rights of members or patrons; and the making of new parties to the proceeding so far as the court considers proper for the determination of all matters;

(4) The presentation and filing of intermediate and final accounts of the directors or of the liquidators and hearings on them; the allowance, disallowance, or settlement of the accounts; and the discharge of the directors, the liquidators, or any of them from their duties and liabilities;

(5) The appointment of a special master commissioner to hear and determine any matters with authority that the court considers proper;

(6) The filling of any vacancies in the number of directors or liquidators when the directors are unable to act on the vacancies for want of a quorum or for any other reason;

(7) The appointment of a receiver, in accordance with the usage of a court in equitable matters, to wind up the affairs of the cooperative, to take custody of any of its property, or for any other purpose;

(8) The issuance or entry of any injunction or any other order that the court considers proper in the winding up of the affairs of the cooperative and the giving of notice of the entry of injunction or order;

(9) The allowance and payment of compensation to the directors or any of them, to liquidators, to a receiver, to the attorney for the complainant, or to any person properly rendering services beneficial to the cooperative or to those interested in it;

(10) The entry of a judgment or decree that, if it so provides, may operate as the deed or other instrument ordered to be executed, or the appointment of a master to execute the deed or instrument in the name of the cooperative with the same effect as if executed by an authorized officer pursuant to authority conferred by the directors or the members of the cooperative whenever there is no officer or agent competent to execute the deed or instrument, whenever the cooperative or its officers do not perform or comply with a judgment or decree of court, or whenever the court considers it proper.

The above described judicial proceeding concerning the winding up of the affairs of a cooperative is a special proceeding, and final orders in the proceeding may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, R.C. Chapter 2505. (Appeals Law).

Appointment of receiver

Whenever, after a cooperative is dissolved voluntarily or the period of existence of a cooperative has expired, a receiver is appointed to wind up the affairs of the cooperative, all the claims, demands, rights, interests, or liens of creditors, claimants, members, and patrons must be determined as of the day on which the receiver was appointed. Unless it is otherwise ordered, the appointment vests in the receiver and the receiver's successors the right to the immediate possession of all the property of the cooperative, which, if so ordered, must execute and deliver conveyances of that property to the receiver. Any officer, director, member, or other person, whether a resident or a nonresident of Ohio and however interested, may be appointed as receiver. The receiver has all the

authority vested in the cooperative's directors and officers, must exercise authority subject to orders made by the court, and may be required to qualify by giving bond to the state in an amount that the court fixes, with surety to the satisfaction of the clerk of the court, conditioned for the faithful discharge of duties and for a due accounting for all money or property received. (R.C. 1770.85.)

Judicial dissolution

A cooperative may be dissolved judicially and its affairs wound up by an order of the court of common pleas of the county in Ohio in which the cooperative has its principal executive office, in an action brought by the members having 60% of the voting power of the cooperative on the proposal, or the holders of a lesser portion as are entitled by the articles or bylaws to dissolve the cooperative voluntarily, when it is established that it is beneficial to the members or patrons that the cooperative be judicially dissolved. However, if the cooperative has no principal executive office in Ohio, the court of common pleas in the county in Ohio where the statutory agent resides may dissolve and wind up the affairs of a cooperative in accordance with the procedures for its judicial dissolution.

A complaint for judicial dissolution must be verified by any of the complainants and set forth facts showing that the case is as specified in these provisions. A schedule must be annexed to the complaint setting forth the name and address of each member of the cooperative, if it is known, or the fact that it is not known. Upon the filing of a complaint for judicial dissolution, the court with which it is filed has power to issue injunctions; to appoint a receiver with authority and duties that the court from time to time may direct; to take other proceedings that may be necessary to protect the property or the rights of the members or patrons; and to carry on the business of the cooperative until a full hearing can be conducted. Upon or after the filing of a complaint for judicial dissolution, the court, by injunction or order, may stay the prosecution of any proceeding against the cooperative or involving any of its property and require the parties to the proceeding to present and prove their claims, demands, rights, interests, or liens at the time and in the manner required of creditors or others. The court may refer the complaint to a special master commissioner.

After a hearing upon notice as that court directs to be given to all parties to the proceeding and to any other parties in interest designated by the court, a final order based either on the evidence or on the report of the special master commissioner, if one has been appointed, must be made dissolving the cooperative or dismissing the complaint. An order or judgment for the judicial dissolution of a cooperative must contain a concise statement of the proceedings leading up to the order or judgment, the name of the cooperative, the place where its principal executive office is located, the names and addresses of its directors and officers, the name and address of a statutory agent, and, if desired, other provisions with

respect to the judicial dissolution and winding up that are considered necessary or desirable. A certified copy of the order must be filed in the office of the SOS, whereupon the cooperative is dissolved. To the extent consistent with orders entered in the proceeding, the effect of judicial dissolution is the same as in the case of voluntary dissolution, and the provisions described above in "Winding up of cooperative's affairs," "Special court proceeding for winding up cooperative's affairs," and "Appointment of receiver" relating to the authority and duties of directors during the winding up of the affairs of a cooperative dissolved voluntarily, with respect to the jurisdiction of courts over the winding up of the affairs of a cooperative, and with respect to receivers for winding up the affairs of a cooperative are applicable to cooperatives that are judicially dissolved.

The above described proceeding for judicial dissolution of a cooperative is a special proceeding, and final orders in it may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, R.C. Chapter 2505. (Appeals Law). (R.C. 1770.86.)

HISTORY

ACTION	DATE
Introduced	05-22-07

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