CHAPTER 193

UNINCORPORATED COOPERATIVE ASSOCIATIONS

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SUBCHAPTER I

GENERAL PROVISIONS

193.001 Citation. This chapter may be cited as the "Wisconsin Cooperative Associations Act."

History: 2005 a. 441.

193.005 Definitions. Unless the context requires otherwise, in this chapter:

(2) "Address" means mailing address and, in the case of a registered address, means the mailing address and the actual office location, which may not be a post office box.

(2m) "Affiliate," when used in reference to any person, means another person who controls, is controlled by, or is under common control with the person.

(3) "Alternative Ballot" means a method of voting, prescribed by the board in advance of the vote, that permits a vote to be cast electronically, telephonically, via the Internet, or by any similar means which reasonably allows members the opportunity to vote.

(3m) "Allocation unit" means a separate business unit of a cooperative.

(4) "Articles" means the articles of organization of a cooperative.

(5) "Association" means an organization conducting business on a cooperative plan under the laws of any state.

(6) "Board" means the board of directors of a cooperative.

(7) "Business entity" means a cooperative, corporation, limited liability company, association, firm, or partnership operated for profit and organized under a law other than a law of this state.

(9) "Cooperative" means an association organized under this chapter conducting business on a cooperative plan as provided under this chapter.

(9m) "Department" means the department of financial institutions.

(10) "Domestic business entity" means a business entity organized under the laws of this state.

(11m) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11p) "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a writing and executed or adopted by a person with intent to authenticate the writing.

(12) "File with the department" means to deliver to the department a document meeting the applicable requirements of this chapter, signed and accompanied by any required filing fee.

(13) "Foreign business entity" means a business entity that is organized under the laws of another state or the United States.

(14) "Foreign cooperative" means a foreign business entity organized to conduct business on a cooperative plan consistent with this chapter or ch. 185.

(15) "Member" means a person reflected on the books of the cooperative as the owner of governance rights of a membership interest of the cooperative. The term includes patron and nonpatron members.

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

(17) "Members' meeting" means a regular or special members' meeting.

(18) "Nonpatron member" means a member who holds a nonpatron membership interest.

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

(20) "Patron" means a person or entity who conducts patronage with the cooperative.

(21) "Patronage" means transactions or services done for or with a cooperative as defined by the cooperative.

(22) "Patron member" means a member holding a patron membership interest.

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

(24) "Sign" means to execute or adopt a manual, facsimile, conformed, or electronic signature or any symbol with intent to authenticate a writing and, with respect to a document required under this chapter to be filed with the department, with authority to do so under this chapter and under the articles, bylaws, or a resolution approved by the directors or members.

(25) "Writing" means information that is inscribed on a tangible medium or that is stored in an electronic or other intangible medium and is retrievable in perceivable form.

History: 2005 a. 441.

193.105 Use of term "cooperative" restricted. (1) USE OF TERM "COOPERATIVE" RESTRICTED. A business entity may not use the term "cooperative" as part of its business name or title or represent itself as a cooperative, in this state, unless the business entity is a cooperative or foreign cooperative or is organized under ch. 185.

(2) PENALTY FOR MISUSE OF TERM "COOPERATIVE". A business entity that violates sub. (1) may be fined not more than $250. Each day of improper use constitutes a separate offense.

History: 2005 a. 441.

193.111 Filing fees and other requirements. (1) Except as provided under sub. (2), the department shall charge and collect for:

(a) Filing articles for a new cooperative, $25, if the new cooperative is organized with no capital stock. If the new cooperative is organized with capital stock, the department may charge $1.25 for each $1,000 of capital stock, or $25, whichever is greater.

(b) Filing an amendment to or restatement of the articles or articles of consolidation or division, $25, except that no fee may be collected for any of the following:

1. An amendment showing only a change of address resulting from the action of a governmental agency if there is no corresponding change in physical location and if 2 copies of the notice of the action are submitted to the department.

2. An amendment or statement filed to reflect only a change in the name of a registered agent.

(c) Filing articles of merger, $30.

(d) Filing articles or decree of dissolution, $5.

(e) Receiving service of any process, notice, or demand, authorized to be served on the department by this chapter, an amount equal to the fee established under s. 182.01 (4) (c).

(g) Filing a report of names and addresses of officers or directors, $3.

(h) Processing in an expeditious manner a document required or permitted to be filed or recorded under this chapter, an amount equal to the fee established under s. 182.01 (4) (d), in addition to the fee required by other provisions of this chapter.

(2) The department, by rule, may specify a larger fee for filing documents described in sub. (1) in paper format.

(3) No document may be filed or recorded until all fees for the document have been paid.

(4) The department shall endorse on any document filed with the department the word "filed" or a similar word determined by the department and the month, day, and year of filing, record the document in the office of the department, and return the document to the person or entity who delivered it for filing.

History: 2005 a. 441.

193.115 Registered office and agent. (1) REGISTERED OFFICE AND AGENT REQUIRED. A cooperative shall establish and continuously maintain in this state all of the following:

(a) A registered office which may be, but need not be, the same as the cooperative's place of business.

(b) A registered agent, which agent may be an individual resident of this state whose business office is identical to the registered office, a domestic business entity, or a foreign business entity authorized to transact business in this state, having an office identical to the registered office.

(2) DESIGNATION OF INITIAL OFFICE AND AGENT. The organizers of a cooperative shall designate the cooperative's initial registered office and agent by filing with the department, along with the original articles of organization under s. 193.215 (1), a statement setting forth all of the following:

(a) The name of the cooperative.

(b) The address of its registered office.

(c) The name of its registered agent.

(d) That the address of its registered office and the address of the business office of its registered agent are identical.

(2m) CHANGE OF OFFICE AND AGENT. Except as provided in sub. (5), a cooperative may change its registered office or agent

by filing with the department a statement setting forth all of the following:

(a) The name of the cooperative.

(b) The address of its then registered office.

(c) If the address of its registered office is to be changed, the address to which the registered office is to be changed.

(d) The name of its then registered agent.

(e) If its registered agent is to be changed, the name of its successor registered agent.

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(g) That any change was authorized by affirmative vote of a majority of the board.

(3) DUTIES OF DEPARTMENT; EFFECTIVE DATE OF CHANGE. Upon receipt of a statement delivered under sub. (2) or (2m), the department shall examine the statement to ensure that it conforms to the applicable requirements of this section. If the department finds that the statement conforms to the applicable requirements of this section, the department shall file the statement. Any change designated in a statement delivered under sub. (2m) takes effect upon filing of the statement by the department.

(4) RESIGNATION OF AGENT. Any registered agent of a cooperative may resign as agent by filing with the department a written notice of resignation, together with one exact or conformed copy. The department shall mail a copy of the notice to the cooperative at its principal mailing address as determined by the department. The resignation takes effect on the first day of the 2nd month beginning after receipt of the notice by the department.

(5) CHANGE OF ADDRESS OR NAME OF AGENT. If the address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as applicable, of the cooperative that appointed the agent by filing with the department the statement required under sub. (2m), except that the statement need only be signed by the registered agent, need not satisfy sub. (2m) (e) or (g), and shall state that a copy of the statement has been mailed to the cooperative or to the legal representative of the cooperative.

History: 2005 a. 441.

193.121 Legal recognition of electronic records and signatures. For the purpose of satisfying 15 USC 7002 (a) (2) (B) as that statute relates to this chapter, this state acknowledges the existence of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031.

History: 2005 a. 441.

SUBCHAPTER II

ORGANIZATION

193.201 Organizational purpose. Except as provided in s. 193.203, a cooperative may be formed and organized on a cooperative plan for patrons as provided under this chapter for any of the following purposes:

(1) To market, process, or otherwise change the form or marketability of products, including crops, livestock, and other agricultural products; to manufacture products; to accomplish other purposes that are necessary or convenient to facilitate the production or marketing of products by patron members and others; and to accomplish other purposes that are related to the business of the cooperative.

(2) To provide products, supplies, and services to its members.

(3) To accomplish any other lawful purpose.

History: 2005 a. 441.

193.203 Exceptions. No cooperative may be organized under this chapter for the purpose of furnishing natural gas, heat, light, power, or water to its members.

History: 2005 a. 441.

193.205 Organizers. (1) QUALIFICATION. A cooperative may be organized by one or more organizers who shall be individuals over the age of 18, 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.

(2) ROLE OF ORGANIZERS. If the cooperative's initial board is not named in the articles, the organizers may elect the initial board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until the board is elected or until a contribution is accepted, whichever occurs first.

(3) MEETING OR WRITTEN ACTION. After the articles are filed, the organizers or the board named in the articles, as applicable, shall hold an organizational meeting at the call of a majority of the organizers or of the board, as applicable, or take written action for the purposes of transacting business and taking actions appropriate to complete the organization of the cooperative. If a meeting is held under this subsection, the person or persons calling the meeting shall give at least 3 days prior notice of the meeting to each organizer or director, as applicable, stating the date, time, and place of the meeting. An organizer or director may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board.

History: 2005 a. 441.

193.211 Cooperative name. (1) DISTINGUISHABLE NAME. The name of a cooperative shall distinguish the cooperative upon the records of the department from the name of all business entities authorized to do business in this state and all names the right to which are, at the time of organization, reserved or provided for by law.

(2) RESERVATION; CONTEST OF NAME. A cooperative's name is reserved for use by the cooperative during the cooperative's existence, except that a person doing business in this state may contest the cooperative's use of the name as provided by law.

History: 2005 a. 441.

193.215 Articles of organization and notice of mailing address. (1) FILING REQUIRED. The organizers of a cooperative shall file with the department the cooperative's original articles as specified under sub. (2), together with the statement required under s. 193.115 (2) and a statement listing the current mailing address of the cooperative.

(2) CONTENT OF ARTICLES. (a) The articles shall state all of the following:

1. The name of the cooperative.

2. The purpose of the cooperative.

3. The name and address of each organizer.

4. The duration of the cooperative, if the duration is not to be perpetual.

(b) The articles may contain any other lawful provision.

(3) EFFECT OF PROPER FILING. Upon compliance with sub. (1), all of the following apply:

(a) It is presumed that all conditions precedent to organizing the cooperative that are required to be performed by the organizers have been satisfied.

(b) The cooperative is chartered by this state as a separate legal entity with perpetual duration or any other duration stated in the articles under sub. (2) (a) 4.

(c) The department shall issue a certificate of organization to the cooperative.

(4) CHANGE OF MAILING ADDRESS. If the mailing address of the cooperative changes, the cooperative shall file with the depart-

ment a statement notifying the department of the change of address.

History: 2005 a. 441.

193.221 Amendment of articles. (1) PROCEDURE. (a) Except as provided under sub. (3), the articles of a cooperative may be amended as follows:

1. The board by majority vote may adopt a resolution stating the text of the proposed amendment. The text of the proposed amendment and, if approved by the board, an attached mail or alternative ballot, shall be mailed or otherwise distributed with any regular or special meeting notice to each member. The notice shall designate the time and place of the meeting at which the proposed amendment will be considered and voted on.

2. If a quorum of the members is registered as being present or represented by alternative vote at the meeting specified in the notice under subd. 1., the proposed amendment may be adopted by the following means, as applicable:

a. By a majority of the votes cast.

b. For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, by a sufficient vote as required under the articles or bylaws or by satisfying the other conditions for approval.

(b) The articles may be amended as restated articles using the procedure under par. (a). If restated articles are adopted, the restated articles supersede all prior articles and amendments to the articles.

(c) After an amendment or restated articles are adopted under par. (a) or (b), the chair, vice−chair, records officer, or assistant records officer of the cooperative shall sign the amendment or restated articles and promptly file a copy with the department.

(2) CERTIFICATE. (a) If an amendment or restated articles are adopted under sub. (1), the board shall prepare a certificate containing all of the following:

1. A statement listing the date of the meeting at which the board adopted the resolution concerning the proposed amendment under sub. (1) (a) 1. or the restated articles and the vote of the board.

2. A copy of the notice provided to members under sub. (1) (a) 1.

3. A listing of the quorum registered at the meeting under sub. (1) (a) 2.

4. A listing of the votes cast adopting the amendment or the restated articles at the meeting under sub. (1) (a) 2.

(b) The chair, vice−chair, records officer, or financial officer of the cooperative shall sign the certificate and file the certificate with the records of the cooperative.

(3) AMENDMENT BY DIRECTORS. A majority of directors may, by resolution, amend the articles if the cooperative does not have any members with voting rights. The board shall promptly file an amendment under this subsection with the department.

(4) EFFECTIVE DATE OF AMENDMENT. An amendment or restated articles adopted under sub. (1) or an amendment adopted under sub. (3) is effective on the date specified in the resolution adopted under sub. (1) (a) 1. or (3), as applicable, or, if no such date is specified, upon the filing of the amendment or restated articles with the department.

History: 2005 a. 441; 2011 a. 260.

193.225 Conversion to cooperative. (1) AUTHORITY AND NOTICE. A business entity other than an cooperative may become a cooperative by following the applicable procedure under sub. (2) or (3). A business entity shall provide its members with a disclosure statement listing the rights and obligations of the members and the capital structure of the proposed cooperative before making a conversion under this section.

(2) PROCEDURE FOR ENTITIES ORGANIZED IN THIS STATE. A business entity organized under the laws of this state, other than a cooperative, that elects to make a conversion as provided under sub. (1) shall amend its organizational documents in the manner provided under the laws that govern the business entity. The business entity shall file with the department amended articles of organization that comply with s. 193.215. Upon the filing of the amended articles of organization, the business entity is converted to a cooperative and is governed by the applicable provisions of this chapter.

(3) PROCEDURE FOR ENTITIES ORGANIZED IN OTHER STATES. A business entity organized under the laws of another state that elects to make a conversion as provided under sub. (1) shall amend its organizational documents in the manner provided under the other state's laws that govern the business entity. The business entity shall file with the department amended articles of organization that comply with s. 193.215. Upon the filing of the amended articles of organization, the business entity is converted to a cooperative and is governed by the applicable provisions of this chapter.

(4) CONVERSION OF COOPERATIVES ORGANIZED UNDER CHAPTER 185. A cooperative that is organized under ch. 185 may not convert to a cooperative organized under this chapter regardless of whether the conversion is accomplished directly within Wisconsin or indirectly through or with any out−of−state entity.

History: 2005 a. 441.

193.231 Curative filing. If the department determines that a cooperative has made an erroneous filing under this chapter, the department may revoke and expunge the erroneous filing and authorize a curative document to be filed. The department shall charge the cooperative a filing fee of $500 for any such revocation, expungement, and subsequent curative filing.

History: 2005 a. 441.

193.241 Bylaws. (1) REQUIRED. A cooperative shall have bylaws governing the cooperative's business affairs and structure, the qualifications, classification, rights, and obligations of members, and the classifications, allocations, and distributions of membership interests which are not otherwise provided in the articles or by this chapter.

(2) CONTENTS. The bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that is not inconsistent with applicable law or the articles and, if not stated in the articles, the bylaws shall include all of the following:

(a) A description of the capital structure of the cooperative, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue member interests and, if applicable, a statement that the board may establish a class or series of member interests, set forth the designation of the class or series, and fix the relative rights and preferences of the class or series.

(b) A provision designating voting and governance rights, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this chapter.

(c) A statement that patron membership interests with voting power are 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 as prescribed in this chapter.

(d) A statement that membership interests held by a member are transferable only with the approval of the board or a statement otherwise describing the manner in which membership interests may be transferred consistent with this chapter.

(e) 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 and nonpatron membership interests collectively, a statement that net income allocated to patron membership interests as deter-

mined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and a statement that the records of the cooperative shall include the interests of patron membership interests and, if authorized, nonpatron membership interests in any classes of interests and in the reserves.

(f) A statement of the number of directors; the qualifications, manner of election, powers, and duties of directors; and the manner in which any compensation of directors is determined. Provisions included in the bylaws under this paragraph shall be consistent with subch. IV.

(g) A statement of the qualifications of members and any limitations on their number.

(h) A description of the methods of admission, withdrawal, suspension, and expulsion of members.

(i) A general description of members' governance rights and 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.

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

(3) ADOPTION AND AMENDMENT; NOTICE. (a) Bylaws shall be adopted prior to any distributions to members, but if the articles provide that rights of contributors to a class of membership interest will be determined in the bylaws, then the bylaws shall be adopted prior to the acceptance of any contributions to that class.

(b) Subject to subs. (4), (5), and (6), the bylaws may be adopted or amended by the board or, if all of the following apply, the members may adopt or amend bylaws at a regular or special members' meeting:

1. The notice of the meeting contains a statement that the bylaws or amendments will be voted upon, a statement summarizing the proposed bylaws or amendments, and either copies of the bylaws or amendments or a statement that copies of the bylaws or amendments are available from the cooperative upon request.

2. A quorum of the members is registered as being present or represented by alternative vote at the meeting.

3. The bylaws or amendments are approved by the following means, as applicable:

a. By a majority of the votes cast.

b. For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, by a sufficient vote as required under the articles or bylaws or by satisfying the other conditions for approval.

(c) The members may amend the bylaws even though the bylaws may also be amended by the board. The board may amend the bylaws even though the bylaws may also be amended by the members.

(d) The board shall distribute to the members any amendment to the bylaws adopted by the board no later than the 10th day after adoption and the notice of the next regular members' meeting occurring after adoption shall contain a notice and summary of, or a copy of, the amendment.

(4) LIMITATION ON BOARD'S AMENDMENT AUTHORITY. The board may not amend the bylaws if any of the following apply:

(a) This chapter, the articles, or the bylaws reserve the power exclusively to the members.

(b) The articles or bylaws expressly prohibit the board from doing so.

(c) The amendment would fix a greater quorum or voting requirement for members or voting groups of members or would amend a provision adopted by amendment under sub. (5).

(5) AMENDMENT TO CHANGE QUORUM OR VOTING REQUIREMENTS FOR MEMBERS. The members may amend the bylaws to specify a greater quorum requirement for members, or voting groups of members, or a greater number of votes or members participating required for approval than is otherwise required by this chapter. An amendment to the bylaws to add, change, or delete such a quorum or voting requirement shall 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 adopted, whichever are more stringent.

(6) AMENDMENT TO CHANGE QUORUM OR VOTING REQUIREMENTS FOR DIRECTORS. (a) A bylaw that specifies a greater quorum requirement for the board or a greater number of votes or directors participating required for approval than is otherwise required by this chapter may be amended as follows:

1. If the bylaw was originally adopted by the members, only by the members.

2. If the bylaw was originally adopted by the board, by the members or by the board.

(b) A bylaw, or amendment to the bylaws, adopted by the members that specifies a greater quorum or voting requirement for the board as described in par. (a) may provide that it may be subsequently amended only by a specified vote of either the members or the board, but if the bylaw or amendment so provides, the bylaw or amendment shall be originally adopted by the specified vote of the members proposed in the bylaw or amendment.

(c) Action by the board under par. (a) 2. shall 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 adopted, whichever is more stringent.

(7) EMERGENCY BYLAWS. (a) Unless otherwise provided in the articles or bylaws, the board may adopt emergency bylaws which take effect only during an emergency as defined in par. (d). The emergency bylaws, which are subject to amendment or repeal by the members, may include all provisions necessary for managing the cooperative during an emergency, including any of the following:

1. Procedures for calling a meeting of the board.

2. Quorum requirements for the meeting.

3. Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during any emergency.

(c) Action taken in good faith in accordance with the emergency bylaws:

1. Binds the cooperative.

2. May not be the basis for imposition of liability on any director, officer, employee, or agent of the cooperative on the ground that the action was not authorized cooperative action.

(d) An emergency exists for the purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

History: 2005 a. 441.

193.245 Cooperative records. (1) A cooperative shall 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.

(2) A cooperative shall maintain appropriate accounting records.

(3) A cooperative shall keep a copy of each of the following records at its principal office:

(a) Its articles, bylaws, and other governing instruments.

(c) A record of the names and addresses of its members, in a form that allows preparation of a list of members that is alphabetical and that shows each member's address.

(d) 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 past 3 years.

(e) All written communications within the past 3 years to members as a group or to any class of members as a group.

(f) A list of the names and business addresses of its current directors and officers.

(g) All financial statements prepared for periods ending during the last fiscal year.

(4) A cooperative shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) Except as otherwise provided under this section, the board may determine what records are appropriate for the purposes of the cooperative, the length of time records are to be retained, and, subject to s. 193.501 (4), policies relating to the confidentiality, disclosure, inspection and copying of the records of the cooperative. This subsection does not permit the board to withhold documents that are otherwise required to be disclosed by law.

History: 2005 a. 441.

SUBCHAPTER III

COOPERATIVE POWERS

193.301 Cooperative powers. (1) GENERALLY. 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. A cooperative has all rights, powers, and privileges granted to entities organized under ch. 185, except those that are inconsistent with an express provision of this chapter.

(2) DEALING IN PRODUCTS. A cooperative may buy, sell, or deal in its own products or the products of any other person and may negotiate the sales price of any product the cooperative sells.

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

(4) ACTS CONCERNING REAL AND PERSONAL PROPERTY. (a) A cooperative may acquire and hold, lease, mortgage, encumber, sell, exchange and convey real and personal property as the business of the cooperative may require.

(b) A cooperative may act as trustee or in any fiduciary capacity for any purpose not inconsistent with the purposes of the cooperative, subject to any applicable requirements of s. 223.105.

(6) DEBT INSTRUMENTS, BORROWING, SECURITY, AND INVESTING. A cooperative may do any of the following:

(a) Issue bonds, debentures, or other evidence of indebtedness.

(b) Borrow money to finance the business of the cooperative.

(c) Secure any of its obligations by mortgage of, creation of a security interest in, or other encumbrance or assignment of all or any of its property, franchises, or income.

(d) Form special purpose business entities to secure assets of the cooperative.

(e) Invest its funds.

(f) Acquire, hold, and dispose of evidences of indebtedness of any business entity.

(7) ADVANCES TO PATRONS. A cooperative may make advances to the cooperative's members or patrons on products delivered by the members or patrons to the cooperative.

(8) DONATIONS. A cooperative may accept donations of money and donations of real or personal property from its members.

(9) LENDING TO AND BORROWING FROM MEMBERS. A cooperative may loan money to its members with security that it considers sufficient, whether or not any property taken as security is of the kind dealt in by the cooperative, and may borrow money from its members.

(10) PENSIONS AND BENEFITS. (a) A cooperative may pay pensions, retirement benefits, and compensation for past services to or for the benefit of the cooperative.

(b) A cooperative may establish and carry out employee benefit plans and provisions for the benefit of any or all of its and its affiliates, officers, managers, directors, governors, employees, and agents. In the case of an affiliate that is a cooperative, a cooperative may establish and carry out provisions for the benefit of the affiliate's members who provide services to the cooperative, and the families, dependents, and beneficiaries of any of them. A cooperative may indemnify a fiduciary of any employee benefit plan or provisions established under this paragraph and purchase insurance for or on behalf of such a fiduciary.

(11) INSURANCE. A cooperative may purchase for its benefit life insurance and other insurance with respect to the services of any of its members, managers, directors, employees, and agents, and may purchase insurance on the life of a member for the purpose of facilitating the cooperative's acquisition of any of the member's membership interests in the cooperative at the death of the member.

(12) OWNERSHIP INTERESTS IN OTHER ENTITIES. (a) A cooperative may acquire, hold, or dispose of ownership interests in another business entity and, if a cooperative acquires ownership interests under this paragraph, assume all rights, interests, privileges, responsibilities, and obligations arising out of the ownership interests. A cooperative that holds an ownership interest in another business entity may, by direction of the board, elect or appoint an individual to represent the cooperative at a meeting of the business entity. The representative may represent the cooperative at such a meeting and may cast any vote the cooperative is entitled to cast at the meeting.

(b) A cooperative may organize business entities.

(c) A cooperative may acquire ownership interests in or organize an entity to which any of the following apply:

1. The entity is organized as a federation of associations.

2. The entity is organized for the purpose of forming a district, state, or national marketing, sales, or service agency.

3. The entity is organized for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

(14) FORFEITURE. (a) Notwithstanding ch. 177, a cooperative may effect the forfeiture to the cooperative of unclaimed allocations, distributions, or credits under this chapter or under s. 185.45 (2) (b) and (c), (3) (a) and (b), and (4) (b), unclaimed stock issued by the cooperative, and unclaimed deposits held by the cooperative, if all of the following conditions are met:

1. No earlier than 3 years and no later than 5 years after the allocation, distribution, or credit is first made available to its owner, the board declares that the allocation, distribution, or credit will be forfeited to the cooperative unless claimed by a date determined by the board, which date shall be a business day at least 60 days after the date of mailing under subd. 2.

2. The cooperative mails a written notice of the declaration under subd. 1. to the owner of the allocation, distribution, or credit at the owner's last−known address, as reflected in the records of the cooperative.

3. The cooperative publishes the notice under subd. 2. as a class 1 notice under ch. 985, on or before the date on which the notice is mailed, in a newspaper published in a municipality having territory within the service area of the cooperative.

4. The allocation, distribution, or credit remains unclaimed after the date determined by the board under subd. 1.

(b) A cooperative that effects a forfeiture under par. (a) shall use any forfeited moneys within one year after the date on which the funds are forfeited for providing scholarships or educational

loans to students or for charitable purposes, as determined by the board.

(c) Property forfeited under this subsection is not subject to ch. 177.

History: 2005 a. 441.

193.305 Emergency powers. (1) In anticipation of or during an emergency, as defined in sub. (4), the board may do any of the following:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) All of the following apply during an emergency, as defined in sub. (4), unless emergency bylaws under s. 193.241 (7) provide otherwise:

(a) 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.

(b) One or more officers of the cooperative 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.

(3) Action taken in good faith during an emergency under this section to further the ordinary business affairs of the cooperative:

(a) Binds the cooperative.

(b) May not be the basis for the imposition of liability on any director, officer, employee, or agent of the cooperative on the ground that the action was not authorized cooperative action.

(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

History: 2005 a. 441.

193.311 Agricultural product and commodity marketing contracts. (1) AUTHORITY. A cooperative and its patron member or patron may enter into a marketing contract, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a specified area exclusively to or through the cooperative or a facility established by the cooperative.

(2) TITLE TO PRODUCTS. If an agricultural product or commodity is sold to a cooperative under a contract under sub. (1), the sale transfers title to the product or commodity absolutely, subject to any valid lien or security interest in the product or commodity, to the cooperative on delivery of the product or commodity or at another time specified in the contract. A contract under sub. (1) may allow a cooperative to sell agricultural products or commodities with or without taking title to the products or commodities, and pay the sales price to the applicable patron member or patron, after deducting amounts specified in the contract.

(3) TERM OF CONTRACT. The term of a contract under sub. (1) may not exceed 10 years, except that a contract may be renewed for periods not exceeding 5 years each, subject to the right of either party to immediately terminate the contract by giving written notice of the termination to the other party.

(4) LIQUIDATED DAMAGES FOR BREACH OF CONTRACT. A contract under sub. (1) may require the patron member or patron to pay an amount to the cooperative as liquidated damages for the patron member's or patron's breach of any provision of the contract regarding the sale, delivery, or withholding of a product or commodity. The amount of liquidated damages shall be specified by including the specified amount in the contract.

(5) INJUNCTION AGAINST BREACH OF CONTRACT. If a patron member or patron breaches or threatens to breach a contract under sub. (1), the cooperative may commence an action for specific performance and injunctive relief under ch. 813.

(6) CRIMINAL PENALTY FOR CONTRACT INTERFERENCE AND FALSE REPORTS. (a) No person may knowingly induce or attempt to induce a patron member or patron of a cooperative to breach a contract under sub. (1).

(b) No person may maliciously and knowingly publish false reports about the finances or management of a cooperative.

(c) Any person who violates par. (a) or (b) may be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

(7) CIVIL LIABILITY FOR CONTRACT INTERFERENCE AND FALSE REPORTS. In addition to the penalty provided in sub. (6) (c), any person who violates sub. (6) (a) or (b) may be liable to the cooperative for damages caused by the violation.

History: 2005 a. 441.

193.315 Indemnification and insurance against securities law claims. Section 185.042 applies to a cooperative to the same extent as if the cooperative was organized under ch. 185.

History: 2005 a. 441.

SUBCHAPTER IV

DIRECTORS AND OFFICERS

193.401 Board governs cooperative. A cooperative shall be governed by its board which shall take all action for and on behalf of the cooperative except those actions reserved or granted to members. No director or group of directors may act for or on behalf of the cooperative unless authorized by the board or this chapter. A director may advocate interests of members or member groups to the board, but the fiduciary duty of each director is to represent the best interests of the cooperative and all members collectively.

History: 2005 a. 441.

193.405 Number of directors. The board shall have at least 5 directors, except that the board of a cooperative with 50 or fewer members may have as few as 3 directors.

History: 2005 a. 441.

193.411 Election of directors. (1) INITIAL BOARD. The initial board shall be established as provided under s. 193.205 (2) and, except as provided in s. 193.205 (2), shall serve until directors are elected by members. The initial board shall appoint directors to fill any vacancies on the initial board, until the directors are elected by the members.

(2) GENERALLY. (a) Directors shall be elected or appointed for the term, at the time, and in the manner provided in this section and the articles and bylaws.

(b) If nonpatron members or nonpatron membership interest are granted voting rights, a majority of the directors shall be members and a majority of the directors shall be elected exclusively by patron members, unless otherwise provided in the articles or bylaws. The patron members may also elect an outside director who is an expert in financial matters but who has no financial interest in the cooperative. Unless the articles or bylaws provide otherwise, the outside director may not vote.

(d) A director holds office for the term for which the director was elected and until a successor is elected and has qualified, unless the director is removed or a vacancy in the office of the director occurs.

(g) Directors may be divided into, designated, and elected by class or other distinction as provided in the articles or bylaws.

(3) ELECTION AT REGULAR MEETING. Except as provided under sub. (1) or (4) or s. 193.415 (4) or 193.421, all directors shall be elected at the regular members' meeting.

(4) DISTRICT OR LOCAL UNIT ELECTION OF DIRECTORS. For a cooperative with districts or other units, directors may be elected by members on a district or unit basis if the articles or bylaws so provide. Directors elected on a district or unit basis may be nomi-

nated or elected at district member meetings if the articles or bylaws so provide. Directors who are nominated at district meetings shall be elected at the regular members' meeting by vote of the entire membership, unless the articles or bylaws provide that such directors are to be elected at a district member meeting or the regular members' meeting by vote of the members of the district.

(4m) CUMULATIVE VOTING. Unless the articles or bylaws so provide, directors may not be elected through the use of any system of voting that permits a voter to allocate multiple votes among eligible candidates.

(5) BALLOTS. All of the following apply to voting under this section:

(a) A member may vote only by casting a ballot as provided under s. 193.545 (3).

(b) The ballot shall be in a form prescribed by the board.

(c) To cast a ballot by mail, a member shall mark the ballot for the candidate chosen, seal the ballot in a plain envelope bearing the member's name and the words "BALLOT ENCLOSED," or similar words, and enclose that envelope in another envelope addressed to the cooperative. To cast an alternative ballot, a member shall follow the procedure prescribed by the board.

(d) If the ballot of the member is received by the cooperative on or before the date of the election, or as otherwise prescribed for alternative ballots, and if all other applicable requirements are satisfied the cooperative shall accept and count the ballot as the vote of the absent member.

(6) BUSINESS ENTITY MEMBERS MAY NOMINATE PERSONS FOR DIRECTOR. Any member that is not an individual may nominate one or more individuals as candidates for election as a director of the cooperative, unless the cooperative's articles or bylaws provide otherwise.

(9) COMPENSATION. Subject to any limitation in the articles or bylaws, the board may fix the compensation of the directors, except that any outside director elected under sub. (2) (b) may not receive any compensation other than authorized per diem reimbursements.

History: 2005 a. 441.

193.415 Removal of directors. All of the following apply, unless the articles or bylaws provide otherwise:

(2) REMOVAL OF TEMPORARY DIRECTORS BY BOARD. A director who was appointed by the board to fill a vacancy may be removed by the board at any time, with or without cause, if all of the following apply:

(a) The members have not elected directors in the interval between the time of the appointment to fill the vacancy and the time of the removal.

(b) A majority of the remaining directors present affirmatively vote to remove the director.

(3) REMOVAL OF DIRECTORS BY MEMBERS. A director 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, except that a director who was elected solely by the patron members or the holders of a class or series of membership interests, as provided in the articles or bylaws, may be removed only by the affirmative vote of the holders of a majority of the voting power of the patron members or of all membership interests of the class or series entitled to vote at an election of that director, respectively.

(4) ELECTION OF REPLACEMENT DIRECTORS. Notwithstanding s. 193.421, a replacement director may be elected to serve out the remaining term of the removed director at a meeting at which the director was removed.

History: 2005 a. 441.

193.417 Resignation of directors. A director may resign by giving notice to the board or the chairperson of the board. The resignation is effective without acceptance upon receipt by the board or the chairperson of the board, unless the notice specifies a later effective date.

History: 2005 a. 441.

193.421 Filling vacancies. (1) PATRON DIRECTORS. If a vacancy occurs in the office of a director who was elected solely by the patron members, as provided in the articles or bylaws, or a new office of director is created for such a director, the board, in consultation with the other directors elected solely by the patron members, as provided in the articles or bylaws, shall appoint a patron member of the cooperative to temporarily fill the vacancy until a successor is elected at the next regular or special members' meeting. An appointment under this subsection shall be by majority vote of the remaining directors, regardless of whether there is a quorum present. If there are no other directors elected solely by the patron members, as provided in the articles or bylaws, at the time of the vacancy, the office shall remain vacant and a special patron members' meeting shall be called to elect a successor.

(2) NONPATRON DIRECTORS. Unless otherwise provided in the articles or bylaws, if a vacancy occurs in the office of any director other than a director described in sub. (1) or if a new office of director is created other than a new office described in sub. (1), the board shall appoint a director to temporarily fill the vacancy by majority vote of the remaining directors, regardless of whether there is a quorum present. A successor shall be elected at the next regular or special members' meeting.

(3) TERM OF SUCCESSOR. Any successor elected under this section is elected for the remainder of the unexpired term of the director whose vacancy the successor was elected to fill.

History: 2005 a. 441.

193.423 Allocation of voting authority among directors. (1) The voting authority of the directors may be allocated according to allocation units or equity classifications of the cooperative if any of the following conditions is satisfied:

(a) The directors elected by patron members have collectively at least 51 percent of the voting authority of the board on general matters of the cooperative.

(b) The directors elected by patron members do not have, collectively, minority voting authority on the board on general matters of the cooperative.

(2) The patron board directors' vote shall be voted collectively as determined by a majority vote of the patron directors. A tie in the number of patron board director votes shall be construed as a vote against the matter.

History: 2005 a. 441.

193.425 Board meetings. (1) TIME AND PLACE. Meetings of the board may be held from time to time as provided in the articles or bylaws at any location that the board selects or by any means described in sub. (2).

(2) VIRTUAL MEETINGS AND ATTENDANCE. Meetings of the board may be held by any means of communication through which the directors may simultaneously hear each other during the meeting. A director may participate in a meeting of the board at which other directors are physically present by any means of communication through which the director, all other directors so participating, and all directors physically present may simultaneously hear each other during the meeting. The number of directors physically present at a meeting, if any, shall be added to the number of directors otherwise participating in the meeting under this subsection to determine whether a quorum is present under s. 193.431, except that any director who objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of determining whether a quorum is present.

(3) CALLING MEETINGS AND NOTICE. Unless the articles or bylaws provide for a different time period and except as provided

in s. 193.205 (3) and subs. (4) and (5), a director may call a board meeting by giving at least 10 days' notice. The notice shall state the date, time, and place of the meeting, except that, if the meeting is held under sub. (2) and if no physical presence of directors at the meeting is intended, the notice shall so state. If required under this chapter, the articles, or the bylaws, the notice shall state the purpose of the meeting.

(4) PREVIOUSLY SCHEDULED OR ADJOURNED MEETINGS. If the day, time, and place of a board meeting are provided in the articles or bylaws, or announced at a previous board meeting, no notice of the meeting is required. Notice that an adjourned meeting will be reconvened need not be given other than by announcement at the meeting at which adjournment is taken.

(5) WAIVER OF NOTICE AND OBJECTION. A director may waive notice of a board meeting. A waiver 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 board meeting is a waiver of notice of that meeting, unless 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.

(6) VOTING BY ABSENT DIRECTORS. 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. If the proposal to be 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 opposed, the consent or opposition shall be counted as the vote of a director present at the meeting in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting.

History: 2005 a. 441.

193.431 Quorum; presence of objecting director. Unless otherwise provided in the articles or bylaws, a majority of the directors currently holding office is a quorum for the transaction of business. Any director who objects at the beginning of a board meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of determining whether a quorum is present. 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 meeting is properly 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 a quorum.

History: 2005 a. 441.

193.435 Actions of the board. (1) GENERALLY. Unless this chapter or the articles or bylaws provide otherwise and except as provided in sub. (2), the board shall take action by the affirmative vote of the greater of the following:

(a) A majority of directors present at a meeting at the time the action is taken.

(b) A majority of the minimum number of directors that would constitute a quorum for the transaction of business at the meeting.

(2) EXCEPTION FOR OBJECTING DIRECTOR. Any director who objects at the beginning of a board meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of sub. (1).

History: 2005 a. 441.

193.441 Actions without a meeting. (1) GENERALLY. (a) Unless the articles or bylaws provide otherwise, any action required or permitted by this chapter to be authorized at a board meeting may be authorized without a meeting if that action is authorized by all directors and is evidenced by one or more written statements, signed by each director, describing and consenting to the action. Such an action has the same effect as an action authorized by unanimous vote at a meeting at which all directors are present and may be described as such in any document.

(b) The articles or bylaws may allow the board to take any other action on behalf of the cooperative, other than an action requiring member approval, without a board meeting, if the action is authorized by the number of directors that would be required to approve the action at a board meeting at which all directors were present and if the action is evidenced by one or more written statements, signed by each authorizing director, describing and consenting to the action. Such an action has the same effect as an action authorized by vote of the number of authorizing directors at a meeting at which all directors are present and may be described as such in any document.

(2) EFFECTIVE DATE. Any action authorized under sub. (1) is effective when the last director necessary for authorization signs the statement evidencing his or her consent, unless the statement specifies a different effective date.

(3) NOTICE AND LIABILITY. When an action is taken under sub. (1) (b) with the authorization of less than all directors, the authorizing directors shall ensure that all other directors are notified immediately of the action and its effective date. Failure to provide the notice does not invalidate the action. A director who does not authorize an action taken under sub. (1) (b) may not be held liable as a result of the action.

(4) RECORDS. A cooperative shall retain all statements signed by its directors under sub. (1).

History: 2005 a. 441.

193.443 Board authority concerning certain cooperative property. (1) SALE IN USUAL AND REGULAR COURSE OF BUSINESS. The board may sell, lease, transfer, or otherwise dispose of all or substantially all of the cooperative's property in the usual and regular course of the cooperative's business.

(2) OTHER SALES. The board may sell, lease, transfer, or otherwise dispose of all or substantially all of the cooperative's property not in the usual and regular course of the cooperative's business if all of the following apply:

(a) The cooperative's accountant has given the board an opinion that the cooperative cannot continue as an ongoing business and is under financial duress.

(b) The board has given notice to the members of the impending or potential disposition prior to the disposition.

(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) SECURITY INTERESTS. The board may grant a security interest in all or substantially all of the cooperative's property whether or not in the usual and regular course of the cooperative's business.

(4) TRANSFER TO CERTAIN AFFILIATES. The board may transfer any or all of the cooperative's property to a business entity all the ownership interests of which are owned by the cooperative.

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

History: 2005 a. 441.

193.445 Audit committee. The board shall establish an audit committee, consisting of members who will ensure an independent review of the cooperative's finances, to review the financial information and accounting reports of the cooperative. The board shall present audited financial statements to the members unless all of the following apply:

(1) The articles or bylaws permit financial statements that are not audited.

(2) The financial statements clearly state that they are not audited and a statement is included in the financial statement

describing the difference between the financial statements and audited financial statements that are prepared according to generally accepted accounting processes.

History: 2005 a. 441.

193.451 Committees. (1) GENERALLY; SPECIAL LITIGATION COMMITTEE. The board, by resolution, may establish committees having the authority of the board in the management of the business of the cooperative to the extent described in the resolution. The board, by resolution, may establish a special litigation committee of specified duration under this subsection, consisting of one or more independent directors or other independent persons, to consider the legal rights of and remedies available to the cooperative and whether those rights should be enforced and those remedies should be pursued. Any committee established under this subsection, other than a special litigation committee, is subject at all times to the direction and control of the board. The board may amend a resolution establishing a special litigation committee.

(2) MEMBERSHIP. A committee established under sub. (1) shall consist of one or more individuals. Unless the articles or bylaws provide otherwise, committee members need not be directors.

(3) COMMITTEE PROCEDURE. The procedures for a board meeting apply to a meeting of a committee established under sub. (1) and to committee members to the same extent as those procedures apply to a board meeting and directors.

(4) MINUTES. The chairperson of a committee established under sub. (1) shall ensure that minutes, if any, of committee meetings are provided, upon request, to members of the committee and to any director.

(5) STANDARD OF CONDUCT FOR DIRECTORS. Establishment of, delegation of authority to, and action by a committee under sub. (1) does not alone constitute compliance by a director with s. 193.455 (1).

(6) DUTIES OF COMMITTEE MEMBERS; LIMITATION OF LIABILITY. Sections 193.455, 193.461, and 193.465 apply to members of committees established under sub. (1) to the same extent as those sections apply to directors.

History: 2005 a. 441.

193.455 Conduct and liability of directors. (1) STANDARD AND LIABILITY. (a) A director shall discharge the duties of the office of director in good faith, in a manner the director reasonably believes to be in the best interests of the cooperative, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A director who so performs his or her duties may not be held liable by reason of being or having been a director.

(b) In discharging his or her duties to the cooperative and in determining what he or she believes to be in the best interests of the cooperative, a director may consider any of the following:

1. The effects of the action on employees, suppliers, creditors, and customers of the cooperative.

2. The effects of the action on communities in which the cooperative operates.

3. The effects of the action on members and stockholders.

4. The economy of this state.

5. The long−term and short−term interests of the cooperative and its patron members, including the possibility that these interests may be best served by the continued independence of the cooperative.

6. Any other factors the director considers pertinent.

(2) RELIANCE. (a) A director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

1. One or more officers or employees of the cooperative whom the director reasonably believes to be reliable 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.

3. A committee established under s. 193.445 or 193.451 (1) on which the director does not serve, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the director's reliance under par. (a) unwarranted.

(3) PRESUMPTION OF ASSENT. A director who is present at a meeting of the board when an action is approved by the board is presumed to have assented to the action approved, unless the director is prohibited by a conflict of interest from voting on the action or does any of the following:

(a) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and fails to participate in the meeting after the objection.

(b) Votes against the action at the meeting.

History: 2005 a. 441.

193.461 Director conflicts of interest. (1) CONFLICT VOIDING CERTAIN CONTRACTS AND TRANSACTIONS. A contract or transaction between a cooperative and a director, as determined under sub. (2) (b) 1., or between a cooperative and a business entity of which at least one of the cooperative's directors is a governor, director, manager, officer, or legal representative, as determined under sub. (2) (b) 2., or in which at least one of the cooperative's directors has a material financial interest, as determined under sub. (2) (a), is void unless any of the following apply:

(a) The contract or transaction was fair and reasonable as to the cooperative at the time it was authorized or ratified by the cooperative; the material facts as to the contract or transaction and as to the director's interest are disclosed or known to the members before the contract or transaction is authorized or ratified by the cooperative; and the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee established under s. 193.445 or 193.451 (1), and the board or committee in good faith authorizes or ratifies the contract or transaction. The interested director may not be counted in determining the presence of a quorum at a meeting where the contract or transaction may be authorized or ratified and may not vote on the authorization or ratification. The person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was fair and reasonable as to the cooperative at the time it was authorized or ratified by the cooperative.

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

(c) The contract or transaction results from a resolution fixing the compensation of a director or of another officer, employee, or agent of the cooperative.

(2) MATERIAL FINANCIAL INTEREST; TRANSACTIONS INVOLVING THIRD PARTIES. (a) For purposes of sub. (1), a director has a material financial interest in each organization in which that director, that director's spouse, parent, child, or sibling, the spouse of that director's child or sibling, or the sibling of that director's spouse has a material financial interest.

(b) 1. For purposes of sub. (1), a contract or transaction between a cooperative and a director or that director's spouse, parent, child, or sibling, the spouse of that director's child or sibling, or the sibling of that director's spouse, is considered to be a transaction between the cooperative and the director.

2. For purposes of sub. (1), a contract or transaction between a cooperative and a business entity of which a director or that director's spouse, parent, child, or sibling, the spouse of that director's child or sibling, or the sibling of that director's spouse, is a governor, director, manager, officer, or legal representative is con-

sidered to be a transaction between the cooperative and a business entity of which the director is a governor, director, manager, officer, or legal representative.

History: 2005 a. 441.

193.465 Limitation of director's liability in articles or bylaws. The articles or bylaws may eliminate or limit a director's personal liability to the cooperative or its members for monetary damages for violating s. 193.455 (1) (a), except that neither the articles nor the bylaws may 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) An act or omission not in good faith or that involves intentional misconduct or a knowing violation of law.

(3) A transaction from which the director derived an improper personal benefit.

(4) An act or omission occurring before the date on which the provision in the articles or bylaws eliminating or limiting liability becomes effective.

(5) A knowing violation of ch. 408, subject to s. 193.605, or illegal distributions of cooperative assets.

History: 2005 a. 441.

193.471 Indemnification. (1) DEFINITIONS. In this section:

(a) "Official capacity" means any of the following:

1. A person's capacity as an officer, employee, or agent of a cooperative or predecessor cooperative.

2. A person's capacity as a member of a committee of a cooperative under s. 193.445 or 193.451 (1) or of a committee of a predecessor cooperative.

3. With respect to a director, chief executive officer, member, or employee of a cooperative who, at the request of the cooperative, serves as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, that person's capacity as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as applicable, of the other organization or employee benefit plan.

4. With respect to a person who was a director, chief executive officer, member, or employee of a predecessor cooperative and who, at the request of the predecessor cooperative, served as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, that person's capacity as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as applicable, of the other organization or employee benefit plan.

(b) "Potential litigant" means a person made or threatened to be made a party to a proceeding by reason of the person's former or present official capacity.

(c) "Predecessor cooperative" means a domestic or foreign cooperative that was the predecessor of a cooperative in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(d) "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.

(e) "Special legal counsel" means counsel who has not represented any of the following:

1. The cooperative or an affiliate.

2. The director, manager, member of a committee under s. 193.445 or 193.451 (1), or employee whose indemnification is in issue.

(2) INDEMNIFICATION. (a) Subject to sub. (4), a cooperative shall indemnify a potential litigant against judgments, penalties, and fines applicable to a proceeding, against excise taxes assessed against the person with respect to an employee benefit plan, and against settlements and reasonable expenses, including attorney fees and disbursements, incurred by the potential litigant in connection with the proceeding, if, with respect to the acts or omissions of the potential litigant complained of in the proceeding, all of the following apply:

1. The potential litigant has not been indemnified against the same amounts by another person.

2. The potential litigant acted in good faith.

3. The potential litigant did not receive an improper personal benefit or commit an act for which liability cannot be eliminated or limited under s. 193.465 (2).

4. In the case of a criminal proceeding, the potential litigant had no reasonable cause to believe the acts or omissions were unlawful.

5. In the case of acts or omissions committed in an official capacity, as defined in sub. (1) (a) 1. or 2., the potential litigant reasonably believed that the acts or omissions were in the best interests of the cooperative or predecessor cooperative, as applicable, and, in the case of acts or omissions committed in an official capacity, as defined in sub. (1) (a) 3. or 4., the potential litigant reasonably believed that the conduct was not opposed to the best interests of the cooperative or predecessor cooperative, as applicable. If the acts or omissions 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 or predecessor cooperative if the potential litigant reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of no contest or its equivalent does not, of itself, establish that the potential litigant did not meet the applicable criteria under par. (a).

(3) ADVANCES. Subject to sub. (4), a potential litigant is entitled, upon written request to the cooperative, to payment or reimbursement by the cooperative of reasonable expenses, including attorney fees and disbursements, incurred by the potential litigant in advance of the final disposition of the proceeding if the potential litigant delivers to the cooperative a written statement that the potential litigant believes in good faith that the applicable criteria for indemnification under sub. (2) (a) have been satisfied and a written undertaking by the potential litigant to repay all amounts so paid or reimbursed by the cooperative if a court determines under sub. (6) (c) that the potential litigant is ineligible for indemnification. The written undertaking is an unlimited general obligation of the potential litigant but need not be secured, and the cooperative shall accept the written undertaking without reference to the potential litigant's financial ability to make the repayment.

(4) PROHIBITION, CONDITIONS, AND LIMITATIONS ON INDEMNIFICATION OR ADVANCES. The articles or bylaws may prohibit indemnification or advances of expenses otherwise required by subs. (2) and (3). The articles or bylaws may impose limitations on indemnification or advances of expenses or conditions on indemnification or advances of expenses in addition to the conditions contained in subs. (2) and (3), if the limitations or conditions apply equally to all persons or to all persons within a given class. A prohibition, limitation, or condition contained in the articles or bylaws under this subsection does not apply to any person seeking indemnification or advancement of expenses under sub. (2) or (3) with respect to any acts or omissions of the person committed before the effective date of the provision in the articles or the date of adoption of the provision in the bylaws, as applicable, establishing the prohibition, limitation, or condition.

(5) REIMBURSEMENT TO WITNESSES. This section does not require, or limit the ability of, a cooperative to reimburse expenses, including attorney fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person is not a potential litigant.

(6) DETERMINATION OF ELIGIBILITY. (a) Except as otherwise provided in this subsection, all determinations whether indemnifi-

cation of a person is required under sub. (2) and whether payment or reimbursement of expenses is required under sub. (3) shall be made as follows:

1. By the board, except as otherwise provided in this paragraph. The directors who are, at the time, parties to the proceeding may not vote on the question of a determination under this subdivision and may not be counted in determining the presence of a quorum at a meeting at which such a question is voted upon.

2. If a quorum under subd. 1. cannot be obtained because of the number of directors that are parties to the proceeding and except as otherwise provided in this paragraph, by a majority of a committee under s. 193.451 (1) that consists of 2 or more directors not at the time parties to the proceeding and that is duly designated to act in the matter by a majority of all directors, including those who are parties.

3. If a determination is not made under subd. 1. or 2. and except as otherwise provided in this paragraph, by special legal counsel, selected either by the board or a committee under s. 193.451 (1). If selected by the board, the vote and determination of the presence of a quorum shall be made as described in subd. 1. If selected by a committee, the committee shall be designated to act and shall vote in the manner described in subd. 2.

4. Except as otherwise provided under this paragraph, if a determination is not made under subd. 1. or 2. and if a quorum of the board cannot be obtained and a committee cannot be established as required under subd. 3., by special legal counsel, selected by a majority of all directors, including directors who are parties to the proceeding.

5. If a determination is not made under subds. 1. to 4., by the affirmative vote of the members. The membership interests held by parties to the proceeding may not be counted in determining the presence of a quorum at a meeting at which the question of a determination under this subdivision is voted upon and parties holding such membership interests may not vote on the determination.

(b) Except as provided in par. (c), with respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, chief executive officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the cooperative, the determination whether indemnification of the person is required under sub. (2) and whether the payment or reimbursement of expenses is required under sub. (3) shall be made by an annually appointed committee under s. 193.451 (1), having at least one member who is a director. Any such committee shall report at least annually to the board concerning its actions.

(c) Within 60 days after the termination of the applicable proceeding or the receipt of a written request for indemnification by the cooperative, whichever occurs earlier, a person seeking indemnification under sub. (2) or payment or reimbursement of expenses under sub. (3) may petition the circuit court for a determination of the person's eligibility for indemnification, payment, or reimbursement, if a determination is made under par. (a) or (b) that the person is ineligible, or if no determination is made under par. (a) or (b). The court shall order the cooperative to indemnify the person if indemnification is required under sub. (2) and, if applicable, shall order the cooperative to pay or reimburse the person's expenses if the payment or reimbursement is required under sub. (3). In addition, if the person is a director or officer of the cooperative, the court shall order the cooperative to indemnify the person if, in view of all the relevant circumstances, the person is fairly and reasonably entitled to indemnification, regardless of whether indemnification is required under sub. (2). In a proceeding under this paragraph, the person seeking indemnification, payment, or reimbursement has the burden of establishing that indemnification is required or that the person is entitled to payment or reimbursement of expenses.

(7m) EXPENSES OF OBTAINING COURT–ORDERED INDEMNIFICATION. If the court, in a proceeding under sub. (6) (c), determines that the cooperative unreasonably refused a director's or officer's request for indemnification under sub. (2), the court shall order the cooperative to pay the officer's or director's reasonable expenses incurred to obtain the court−ordered indemnification.

(9) INSURANCE. 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 be required to indemnify the person against the liability under sub. (2).

(10) DISCLOSURE. A cooperative that indemnifies or advances expenses to a person under sub. (2) or (3) shall 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 date of the first members' meeting occurring after the payment.

(11) INDEMNIFICATION OF OTHER PERSONS. This section does not limit the power of a cooperative to indemnify persons who do not act in an official capacity.

History: 2005 a. 441; 2007 a. 96.

193.475 Officers. (1) REQUIRED OFFICERS. (a) The board shall elect a chairperson and one or more vice−chairpersons.

(b) Except as provided in sub. (3), the board shall elect or appoint a records officer and a financial officer.

(2) CHIEF EXECUTIVE AND ADDITIONAL OFFICERS. The board may employ a chief executive officer to manage the day−to−day affairs and business of the cooperative. The board may elect additional officers as the articles or bylaws authorize or require.

(3) RECORDS OFFICER AND FINANCIAL OFFICER MAY BE COMBINED. The offices of records officer and financial officer may be combined.

(4) OFFICERS THAT SHALL BE DIRECTORS AND MEMBERS. The chairperson and first vice−chairperson shall each be a director and member. The financial officer, records officer, and additional officers need not be directors or members.

History: 2005 a. 441.

193.478 Director Education. A director shall annually attend a course in at least 2 of the following topics offered by a recognized provider of cooperative director education:

(1) Duties and responsibilities of a cooperative director.

(2) Board and management relations.

(3) The board's role in defining and developing cooperative policies.

(4) Understanding cooperative governance and structure.

(5) Understanding financial statements, key financial ratios, and control tools.

(6) Cooperative finance and equity redemption.

(7) Cooperative strategic planning.

(8) Cooperative membership communication and education.

(9) Selecting and evaluating principal cooperative management.

(10) Board evaluation.

(11) Analyzing and understanding the current cooperative business environment.

History: 2005 a. 441.

SUBCHAPTER V

MEMBERS

193.501 Members. (1) REQUIREMENT. A cooperative shall have at least one patron member, except that if any patron member is a natural person, a cooperative shall have at least 5 patron members who are natural persons and who are adults. A cooperative may have nonpatron members if the patron members by majority vote approve an article, bylaw provision, or amendment provision authorizing nonpatron members.

(2) GROUPING OF MEMBERS. (a) A cooperative may group members in districts or units, or on another basis, to the extent authorized in the articles or bylaws. The articles or bylaws may authorize the board to determine the grouping of members.

(b) The board may take all steps necessary to implement the use of groupings established under par. (a), including setting the time and place and prescribing the rules of conduct for holding meetings by group to elect delegates to members' meetings.

(3) MEMBER VIOLATIONS. (a) A member who knowingly, intentionally, or repeatedly violates a provision of the articles or bylaws, or a member control agreement or marketing contract with the cooperative, may be required by the board to surrender the member's membership interest in the cooperative or any of the following portions of the member's membership interest:

1. Governance rights and right to assign governance rights.

2. Financial rights and right to assign financial rights.

(b) 1. Except as provided in subd. 2., if the board requires a member to surrender the member's membership interest or the rights described in par. (a) 2., the cooperative shall refund to the member the lesser of the book value or market value of the membership interest or rights, as applicable, payable in not more than 7 years from the date of surrender.

2. If the board requires a patron member to surrender the patron member's rights described in par. (a) 2., the board may transfer all of those rights to a class of financial rights held by members who are not patron members, or to a certificate of interest that carries liquidation rights on par with membership interests and that must be redeemed within 7 years after the transfer as provided in the certificate.

(c) The board may reissue or retire and cancel any membership interests required to be surrendered under par. (a).

(4) INSPECTION OF COOPERATIVE RECORDS BY MEMBER. (a) Except as otherwise provided in this paragraph and pars. (d) and (e), a member may inspect and copy any of the records described in s. 193.245 if the member meets the requirements of par. (b). A member's agent or attorney has the same inspection and copying rights under this paragraph as the member. No member may 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 relating to any employee of the cooperative, unless the member is a director or officer acting pursuant to authority of the board. Except as provided under par. (e), records shall be inspected and copied under this paragraph during regular business hours at a reasonable location specified by the cooperative.

(b) A member may inspect and copy records under par. (a) if all of the following apply:

1. The member has been a member for at least one year immediately preceding the demand to inspect or copy or holds at least 5 percent of all of the outstanding equity interests in the cooperative as of the date the demand is made.

2. The member gives the cooperative a written demand to inspect or copy at least 5 business days before the date on which the member wishes to inspect or copy the records.

3. The written demand describes with reasonable particularity the purpose for which the demand is made and the records the member desires to inspect or copy.

4. The demand is made in good faith and for a proper cooperative business purpose.

5. The records are directly connected with the described purpose.

(d) This section does not affect any of the following:

1. 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.

2. The power of a court to compel the production of the cooperative's records for examination.

(e) If records to be inspected or copied under par. (a) are in active use or storage and, therefore, not available at the time otherwise provided under par. (a) for inspection or copying, the cooperative shall so notify the member and establish a date and time for the inspection or copying that is within 3 business days of the date otherwise provided under par. (a) for inspection or copying.

(f) The right to copy records under par. (a) includes, if reasonable, the right to receive copies from the cooperative. The cooperative may impose a reasonable charge for copies of any records provided to the member. The charge may not exceed the estimated cost of production and reproduction of the records. Any copies made by the member shall be made at the member's expense.

(g) If a cooperative refuses to allow a person to inspect or copy records that the person is entitled to inspect or copy under par. (a) within any time period prescribed under par. (e) or, if none, within a reasonable time, the person may petition the circuit court for the county where the cooperative's principal office is located or, if it has no principal office in this state, for the county in which the cooperative's registered office is located, for an order compelling the cooperative to permit the inspection or copying. A court that issues an order under this paragraph may impose reasonable restrictions on the use or distribution of the records by the person. A court that issues an order under this paragraph may do any of the following, 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 person to inspect or copy the records under par. (a):

1. Order the cooperative to pay the person's reasonable costs in obtaining the order, including reasonable attorney fees.

2. Order the cooperative to pay the person for any damages the person incurred by reason of the cooperative's refusal to permit inspection or copying.

3. Order the cooperative to pay the member's inspection and copying expenses, notwithstanding par. (f).

5. Impose reasonable restrictions on the use or distribution of the records by the person.

History: 2005 a. 441.

193.505 Member liability. A person is not personally liable for the acts, debts, liabilities, or obligations of a cooperative merely because of the person's status as a member. A member is liable for any unpaid subscription for the member's membership interest, unpaid membership fees, or any debt for which the member has separately contracted with the cooperative.

History: 2005 a. 441.

193.511 Regular members' meetings. (1) ANNUAL MEETING. A regular members' meeting shall be held annually at a time determined by the board, unless the articles or bylaws provide otherwise.

(2) LOCATION. The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the board or under the articles or bylaws.

(3) BUSINESS AND FISCAL REPORTS. The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year and indicating the condition of the cooperative at the close of the fiscal year.

(5) NOTICE. Except as otherwise provided in this subsection, sub. (6), and s. 193.553, the cooperative shall mail a notice of the regular members' meeting to each member at the member's last known address. The cooperative shall deposit the notice in the mail at least 15 days before the date of the meeting. In lieu of mailing, the cooperative may provide notice of the meeting by any means approved by the board and agreed to by the members. The cooperative shall provide any such notice at least 2 weeks before the date of the meeting. Any notice provided to an entity under this subsection shall be addressed or directed to an officer of the entity.

(6) WAIVER AND OBJECTION. A member may waive notice of a regular members' meeting. A waiver 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 regular members' meeting is a waiver of notice of that meeting, except where the member 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, or objects before a vote on an item of business at the meeting because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at the meeting.

History: 2005 a. 441.

193.515 Special members' meetings. (1) CALLING A MEETING. A special members' meeting may be called by any of the following means:

(a) By the board.

(b) By petition of the members under this paragraph. Except as otherwise provided in this paragraph, the chairperson of the board shall call a special members' meeting if a written petition requesting the meeting is signed by at least 20 percent of the patron members and is submitted to the chairperson. Unless the articles or bylaws provide otherwise and except as otherwise provided in this paragraph, the chairperson of the board shall call a special members' meeting if a written petition requesting the meeting is signed by at least 20 percent of the nonpatron members, 20 percent of all members, or members representing 20 percent of all membership interests and is submitted to the chairperson. A special members' meeting held under this paragraph shall be held within 30 days after submission of the petition to the chairperson. This paragraph does not authorize any meeting that is unrelated to a proper cooperative purpose.

(2) NOTICE. Except as otherwise provided in this subsection, sub. (3), and s. 193.553, the cooperative shall mail a notice of any special members' meeting to each member at the member's last known address. In lieu of mailing, the cooperative may provide notice of the meeting by any means approved by the board and agreed to by the members. Any notice provided to an entity under this subsection shall be addressed or directed to an officer of the entity. Any notice provided under this subsection shall state the time, place, and purpose of the meeting. Any notice provided under this subsection shall be given at least 10 days before the date of the meeting.

(3) WAIVER AND OBJECTION. A member may waive notice of a special members' meeting. A waiver 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 special members' meeting is a waiver of notice of that meeting, except where the member 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, or objects before a vote on an item of business at the meeting because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at the meeting.

History: 2005 a. 441.

193.518 Effect of insufficient notice. Failure of a member to receive a notice required under s. 193.511 (5) or 193.515 (2) does not invalidate any action that is taken at the applicable meeting.

History: 2005 a. 441.

193.521 Certification of notice. (1) CERTIFICATE REQUIRED. After mailing or otherwise providing notices required under s. 193.511 (5) or 193.515 (2), the cooperative shall execute a certificate containing the date of mailing or provision of the notices and a statement that the notices were mailed or provided as required under s. 193.511 (5) or 193.515 (2), as applicable.

(2) MATTER OF RECORD. The cooperative shall include the certificate under sub. (1) in the record of the meeting to which the certificate relates.

History: 2005 a. 441.

193.523 Electronic notice. (1) EFFECTIVE DATE OF ELECTRONIC NOTICE. Any notice given by a cooperative to members in electronic format takes effect as follows:

(a) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice.

(c) If by a posting on an electronic network on which the member has consented to receive notice, upon the later to occur of the posting and the giving of a separate notice to the member of the specific posting.

(d) If by any other means to which the member has consented, when directed to the member pursuant to that means.

(2) AFFIDAVIT. An affidavit of the secretary of the board, other authorized officer, or authorized agent of the cooperative, indicating that a notice has been given in electronic format under sub. (1) is, in the absence of fraud, prima facie evidence that the notice was so given.

(3) CONSENT. If a member consents to the receipt of notice in electronic format, the member shall deliver a statement to that effect in writing to the cooperative. A statement under this subsection is effective until it is revoked by the member. A revocation under this subsection does not affect the validity of any notice given before receipt by the cooperative of the revocation.

History: 2005 a. 441.

193.524 Revocation of electronic communication. A member may revoke any vote, authorization, or consent submitted in electronic format by the member to a cooperative under this chapter by delivering a notice of revocation to a director or the chief executive officer of the cooperative before the vote is counted or the authorization or consent is relied upon.

History: 2005 a. 441.

193.525 Quorum at members' meeting. (1) GENERALLY; PRESENCE OF OBJECTING MEMBER. Unless the articles or bylaws provide otherwise and except as provided in sub. (2m), a quorum for the transaction of business at a members' meeting is 10 percent of the total number of members for a cooperative with 100 or less members and 15 percent of the total number of members for all other cooperatives. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members present at the meeting. The registration shall be verified by the chairperson of the board or the records officer of the cooperative and shall be reported in the minutes of the meeting. Any member who objects at the beginning of a members' meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of determining whether a quorum is present.

(2) QUORUM FOR VOTING BY MAIL OR ALTERNATIVE BALLOT. Except as provided in s. 193.531 (2), in determining whether a quorum is present at a members' meeting for purposes of conducting a vote on a question that members may vote on by mail or alternative ballot, the number of members physically present at the meeting shall be added to the number of members voting by mail or alternative ballot.

(2m) QUORUM FOR VOTES BY CLASS OR SERIES. Except as otherwise provided in the articles or bylaws or a member control agreement, if a vote at a members' meeting is open only to holders of a particular class or series of membership interests, a quorum for conducting the vote is a number of members holding 10 percent of the voting power of the class or series for a cooperative with 100 or less members and a number of members holding 15

percent of the voting power of the class or series for all other cooperatives.

(3) MEETING ACTION INVALID WITHOUT QUORUM. An action taken or approved at a members' meeting by vote of the members is invalid if a quorum is not present at the time of the vote, unless approval of the members is not required under this chapter, the articles, or the bylaws.

History: 2005 a. 441.

193.531 Virtual members' meetings and attendance. (1) CONSTRUCTION AND APPLICATION. This section shall be construed and applied as follows:

(a) To facilitate remote communication consistent with other applicable law.

(b) To be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

(2) VIRTUAL MEMBERS' MEETINGS AND ATTENDANCE. To the extent authorized in the articles or bylaws or, unless prohibited by the articles or bylaws, in a member control agreement, and as determined by the board, a members' meeting may be held such that all members participate in the meeting by a means of communication rather than by being physically present at the meeting. To the extent authorized in the articles or bylaws or, unless prohibited by the articles or bylaws, in a member control agreement, and as determined by the board, a member may participate in a members' meeting at which other members are physically present by a means of communication rather than by being physically present at the meeting. A meeting may be held or a member may participate in a meeting as authorized under this subsection only if the requirements of sub. (4) are satisfied. The number of members physically present at a meeting, if any, shall be added to the number of members otherwise participating in the meeting under this subsection to determine whether a quorum is present under s. 193.525, except that any member who objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of determining whether a quorum is present.

(4) REQUIREMENTS FOR VIRTUAL MEETINGS AND ATTENDANCE. All of the following apply to any meeting held under sub. (2):

(a) The cooperative shall implement reasonable measures to verify that each person participating in the meeting by a means of communication is a member.

(b) The cooperative shall implement reasonable measures to provide each member participating in the meeting by a means of communication with a reasonable opportunity to actively participate, including an opportunity to do all of the following:

1. Read or hear the proceedings of the meeting substantially concurrently with those proceedings.

2. If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks.

3. If otherwise entitled, vote on matters submitted to the members.

History: 2005 a. 441.

193.535 Actions of the members. (1) GENERALLY. Unless this chapter provides otherwise and except as provided in sub. (2m) and s. 193.545 (1) (a) and (4), the members shall take action by the affirmative vote of the greater of the following:

(a) A majority of the voting power of the membership interests present and entitled to vote on that item of business.

(b) A majority of the voting power that would constitute a quorum for the transaction of business at the meeting or for conducting the vote.

(c) The proportion of voting power specified in this chapter, the articles or bylaws, or a member control agreement as necessary for that item of business.

(2m) EXCEPTION FOR OBJECTING MEMBER. Any member who objects at the beginning of a members' meeting to the transaction of business because the meeting is not lawfully called or convened and who fails to participate in the meeting after the objection may not be considered as present at the meeting for purposes of sub. (1).

History: 2005 a. 441.

193.541 Actions without a members' meeting. (1) GENERALLY. (a) Unless the articles or bylaws provide otherwise, any action required or permitted by this chapter to be authorized at a members' meeting may be authorized without a meeting if that action is authorized by all members and is evidenced by one or more written statements, signed by each member, describing and consenting to the action. Such an action has the same effect as an action authorized by unanimous vote at a members' meeting at which all members are present and may be described as such in any document.

(b) The articles or bylaws may allow the members to authorize any other action on behalf of the cooperative, other than an action requiring board approval, without a members' meeting, if the action is authorized by the number of members that would be required to approve the action at a members' meeting at which all members were present and if the action is evidenced by one or more written statements, signed by each authorizing member, describing and consenting to the action. Such an action has the same effect as an action authorized by vote of the number of authorizing members at a meeting at which all members are present and may be described as such in any document.

(2) EFFECTIVE DATE. Any action authorized under sub. (1) is effective when the last member necessary for authorization signs the statement evidencing his or her consent, unless the statement specifies a different effective date.

(3) NOTICE AND LIABILITY. When an action is taken under sub. (1) (b) with the authorization of less than all members, the board shall ensure that all other members are notified immediately of the action and its effective date. Failure to provide the notice does not invalidate the action. A member who does not authorize an action taken under sub. (1) (b) may not be held liable as a result of the action.

(4) RECORDS. A cooperative shall retain all statements signed by its members under sub. (1).

History: 2005 a. 441.

193.545 Member voting rights. (1) GENERALLY. (a) Each patron member has one vote on each issue that patron members may vote upon. Nonpatron members, if authorized by the patron members, may or may not have voting rights relating to being a nonpatron member or holding nonpatron membership interests. If voting rights are granted to nonpatron members or to nonpatron membership interests, patron members may not have less voting rights than provided in this section. The collective vote of the patron members shall be determined by the vote of the majority of patron members voting on the issue. Except as provided under s. 193.551, in determining the collective vote of patron members, each patron member has one vote on the issue. Unless the articles or bylaws provide otherwise, no issue that patron members may vote upon may be approved unless, in determining the collective vote of the patron members, the number of patron members voting to approve the issue is a majority of all members voting on the issue. The articles or bylaws may not reduce the collective patron member vote to less than 51 percent of the total member vote.

(b) Except as otherwise provided in this chapter, a nonpatron member has the voting rights granted to members holding nonpatron membership interests in the articles or bylaws.

(2) VOTING AT A MEMBERS' MEETING. A member may vote at a members' meeting at any time from the time the member arrives at the meeting to the time the meeting is adjourned, unless the articles or bylaws specify an earlier time for closing the vote.

(3) VOTING METHOD. (a) Except as otherwise provided in this paragraph, a member may vote only by casting a ballot at a meeting, by delegate as provided under sub. (4), by proxy as provided under s. 193.565, or, if authorized by the board, by mailing a ballot or by using an alternative ballot.

(b) The ballot shall be in a form prescribed by the board.

(c) To cast a ballot by mail, a member shall mark the member's choice on the ballot, seal the ballot in a plain envelope bearing the member's name and the words "BALLOT ENCLOSED," or similar words, and enclose that envelope in another envelope addressed to the cooperative. To cast an alternative ballot, a member shall follow the procedure prescribed by the board.

(d) If the ballot of a member is received by the cooperative on or before the date of the election, or as otherwise prescribed for alternative ballots, and if all other applicable requirements are satisfied, the cooperative shall accept and count the ballot as the vote of the absent member.

(4) MEMBERS REPRESENTED BY DELEGATES. For a cooperative with districts or other units, the articles or bylaws may provide that members from the districts or other units be represented at members' meetings by delegates chosen by those members. A delegate representing patron members shall be a patron member. Except as provided in s. 193.551 (2) and as otherwise provided in this subsection, a delegate may vote in the same manner as and to the same extent as the members collectively whom the delegate represents are otherwise authorized to vote.

History: 2005 a. 441.

193.551 Patron member voting based on patronage. **(1)** ADDITIONAL VOTE PERMITTED. (a) The articles or bylaws may authorize patron members to have an additional vote in determining the collective vote of patron members under s. 193.545 (1) (a) as provided in this subsection.

(b) The articles or bylaws may grant a patron member an additional vote under par. (a) if the issue to be voted upon relates to a specified amount of business transacted between the patron member and the cooperative.

(c) The articles or bylaws may grant additional votes under par. (a) to a specified number of patron members who are also patron members of another cooperative that is itself a member of the cooperative.

(d) The articles or bylaws may grant additional votes under par. (a) to a patron member that is a cooperative, based on the amount of equity allocated to or held by the patron member in the cooperative.

(2) ADDITIONAL VOTES FOR DELEGATES. (a) For a cooperative with districts or other units of patron members, the articles or bylaws may authorize a delegate elected by patron members to have additional votes as provided in this subsection in determining the collective vote of patron members under s. 193.545 (1) (a).

(b) The articles or bylaws may grant a delegate an additional vote under par. (a) based on a specified amount of business transacted between the patron members represented by the delegate and the cooperative.

(c) The articles or bylaws may grant a delegate an additional vote under par. (a) based upon the amount of equity allocated to or held by the patron members represented by the delegate.

History: 2005 a. 441.

193.553 Voting rights limited to members as of date certain. The board may establish a date for the determination of membership interests entitled to notice of and entitled to vote at a members' meeting. The date established by the board may not be more than 60 days before the date of the meeting. If a date is established under this subsection, only members as of that date are entitled to notice of and may vote at that meeting.

History: 2005 a. 441.

193.555 Voting rights of nonmembers. The articles or bylaws may authorize any nonmember or class of nonmembers to vote at a members' meeting in the same manner as patron members are permitted to vote. The articles or bylaws may prescribe the manner by which persons are authorized to vote under this section.

History: 2005 a. 441.

193.557 Voting of jointly owned membership interests. If a membership interest is owned jointly by 2 or more persons, any one of the owners may vote based upon that membership interest, unless the cooperative receives written notice from any of the owners denying the authority of that person to vote based upon that membership interest.

History: 2005 a. 441.

193.559 Cumulative voting by members. Except as provided in ss. 193.411 (4m) and 193.557, a member with more than one vote that is entitled to vote may allocate the member's votes in any way the member chooses. If such a member votes without designating an allocation, the member is considered to have voted all of the member's votes in that way.

History: 2005 a. 441.

193.561 Voting by business entities, subsidiaries, legal representatives, and holders of security interests. **(1)** MEMBERSHIP INTERESTS HELD BY A BUSINESS ENTITY. If a member entitled to vote is a business entity, the chairperson of the board, chief executive officer, or other authorized agent of the member may cast the member's votes.

(2) MEMBERSHIP INTEREST HELD BY SUBSIDIARY OF COOPERATIVE. Except as provided in the articles or bylaws or sub. (3), if a member is a subsidiary of the cooperative, the member may not vote.

(3) MEMBERSHIP INTEREST HELD IN FIDUCIARY CAPACITY BY COOPERATIVE. Membership interests held in a fiduciary capacity by the cooperative or a subsidiary of the cooperative are not entitled to vote, except to the extent that the settlor or beneficiary is entitled to vote and either exercises the right to vote or instructs the cooperative or subsidiary on how to vote.

(4) MEMBERSHIP INTEREST CONTROLLED BY CERTAIN REPRESENTATIVES. Except as provided in subs. (3) and (5), if a person, in the capacity of a personal representative, administrator, executor, guardian, or conservator, or in a similar capacity, controls the membership interest of a member entitled to vote, the person may vote on behalf of the member.

(5) MEMBERSHIP INTEREST CONTROLLED BY TRUSTEE IN BANKRUPTCY OR RECEIVER. If a trustee in bankruptcy or a receiver controls the membership interest of a member entitled to vote, the trustee or receiver may vote on behalf of the member if authorized to do so by the court appointing the trustee or receiver.

(7) HOLDERS OF SECURITY INTEREST. The granting of a security interest in a membership interest does not entitle the holder of the security interest to vote.

History: 2005 a. 441.

193.565 Voting by proxy. **(1)** AUTHORIZATION AND APPOINTMENT OF PROXY. (a) A member entitled to vote may do so by proxy appointed under this paragraph. Except as provided in sub. (7), a member may grant a proxy to vote by giving the board or an authorized agent of the cooperative an appointment of a proxy, in writing, before the meeting at which the appointment is to be effective. If the appointment of proxy is given in electronic format, the appointment is effective only if an authorized agent of the cooperative determines that the appointment is authorized by the member. The authorized agent shall record the information upon which he or she relied to make the determination. A proxy

appointed under this paragraph may vote in the same manner as and to the same extent as the appointing member is otherwise authorized to vote, consistent with subs. (5) and (7).

(b) A reproduction of the original written appointment under par. (a) may be substituted or used in lieu of the original for any purpose for which the original could be used, if the reproduction is a complete, legible, and accurate reproduction of the entire original.

(c) If a membership interest is owned jointly by 2 or more members, any one of the owners may appoint a proxy under par. (a), unless the cooperative receives written notice from any of the owners denying the authority of that person to appoint a proxy or appointing a different proxy.

(2) DURATION OF APPOINTMENT. The appointment of a proxy under sub. (1) (a) is valid for 11 months, unless a longer period is expressly provided in the appointment or unless the appointment is terminated under sub. (3).

(3) TERMINATION. An appointment of a proxy under sub. (1) (a) may be terminated at will by the appointing member or the proxy, unless the appointment is conditioned upon ownership of or subject to terms and conditions of a membership interest. Except as provided in sub. (4), an appointment that is coupled with a membership interest as described in this subsection is irrevocable and may not be terminated, unless an agreement between the appointing member and the proxy specifies otherwise. A termination under this subsection is effective upon filing written notice of the termination with an authorized agent of the cooperative or filing a new appointment under sub. (1) (a), whichever occurs first.

(4) REVOCATION BY DEATH OR INCAPACITY. The death or incapacity of a member appointing a proxy under sub. (1) (a) does not revoke the appointment, unless written notice of the death or incapacity is received by an authorized agent of the cooperative before the proxy exercises the authority under the appointment.

(5) MULTIPLE PROXIES. Except as provided in sub. (7), all of the following apply if 2 or more persons are appointed as proxies for a member under sub. (1) (a):

(a) Only one of them may vote on behalf of the member on each item of business in accordance with specific instructions contained in the appointment.

(b) If no specific instructions are contained in the appointment with respect to a particular item of business, the vote of the member shall be cast as a majority of the proxies determine. If the proxies are equally divided in determining how such a vote shall be cast, no vote may be cast.

(6) LIABILITY OF PROXY. A proxy appointed under sub. (1) (a) is liable to the appointing member for damages resulting from the proxy's failure to exercise his or her authority or from the proxy's acting in violation of the authority granted in the appointment.

(7) LIMITATIONS ON PROXIES. (a) A patron member may only appoint another patron member as a proxy under sub. (1) (a).

(b) No member may vote by proxy under sub. (1) (a) if the member is represented by a delegate under s. 193.545 (4).

(c) No member may vote by proxy under sub. (1) (a) in an election of directors under s. 193.411 (3) or (4).

(d) If an appointment of a proxy under sub. (1) (a) gives the proxy authority to vote on less than all items of business considered at a meeting, the appointing member may vote by proxy only with respect to those items of business for which the proxy has authority to vote.

(e) An appointment of a proxy under sub. (1) (a) may restrict or limit the authority of the proxy or reserve authority for the appointing member.

History: 2005 a. 441.

193.571 Member authority concerning certain cooperative property. Except as provided in s. 193.443, a cooperative 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, upon those terms and conditions that the board considers expedient, when approved by the affirmative vote of the members owning a majority of the voting power of the interests entitled to vote and by the board. Notwithstanding s. 193.511 (6), 193.515 (3), and 193.553, written notice of any members' meeting at which a vote will be taken under this section shall be given to all members. The written notice shall 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.

History: 2005 a. 441.

SUBCHAPTER VI

MEMBERSHIP INTERESTS

193.601 Membership interests. (1) AMOUNTS AND DIVISIONS OF MEMBERSHIP INTERESTS. To the extent permitted under this chapter, a cooperative may increase, decrease, establish, or alter the authorized amount and divisions of membership interests by amending the articles under s. 193.221 or the bylaws under s. 193.241.

(2) ISSUANCE AND ACQUISITION OF MEMBERSHIP INTERESTS GENERALLY. A cooperative may issue authorized membership interests on terms and conditions prescribed in the articles or bylaws or, if authorized in the articles or bylaws, on terms and conditions determined by the board. The cooperative shall disclose to any person to whom a membership interest is issued, before issuance, the organizational and capital structure of the cooperative, known business prospects and risks of the cooperative, and 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 shall notify all members, before issuance, of any membership interest issued by the cooperative. The cooperative may not issue a membership interest to any person unless the subscription price of the membership interest has been paid for in money or property. If the subscription price is paid for in property, the value of the property to be contributed shall be approved by the board.

(3) TRANSFERRING OWNERSHIP OF MEMBERSHIP INTERESTS. After issuance by the cooperative, ownership of a membership interest may be transferred only with the approval of the board. The board may adopt resolutions prescribing procedures to approve transfers prospectively.

(4) PATRON MEMBERSHIP INTERESTS. Except as otherwise provided in this subsection, if nonpatron membership interests are authorized by the patron members, all patron membership interests, collectively, shall have not less than 51 percent of the cooperative's financial rights to profit allocations and distributions. The patron members by majority vote may authorize that the patron membership interests, collectively, may have less than 51 percent, but not less than 30 percent, of the cooperative's financial rights to profit allocations and distributions, and this change must be included in the bylaws. Notwithstanding s. 193.221 (1) and (3), an amendment of the articles under this subsection may be adopted only if approved by the affirmative vote of the patron members.

(5) FIRST PRIVILEGE TO PURCHASE MEMBERSHIP INTERESTS. The articles or bylaws may provide the patron members, individually or collectively, or the cooperative with the first privilege of purchasing the membership interests of any class of membership interests offered for sale. If the articles or bylaws provide patron members with a first privilege to purchase membership interests under this subsection, the articles or bylaws shall include a procedure by which patron members may proceed to acquire the membership interests. If the cooperative acquires a membership interest under this subsection, the cooperative may hold the interest to be reissued or may retire and cancel the interest.

(6) NONPATRON MEMBERSHIP INTERESTS. If nonpatron membership interests are authorized by the patron members, each person to whom a nonpatron membership interest is issued shall sign

a member control agreement or a statement agreeing to abide by any applicable conditions imposed under the bylaws. Unless the bylaws contain a sufficient description, the cooperative shall provide to a person to whom a nonpatron membership interest is issued, before issuance, a description of the rights and obligations applicable to holders of that nonpatron membership interest, the transferability of that nonpatron membership interest, and the manner in which profits and losses are divided and allocated among the membership interests and membership classes.

(6m) ALLOCATION OF PROFITS, LOSSES, AND DISTRIBUTIONS. If the articles or bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and any authorized nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated based on the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles and bylaws, subject to the provisions of this chapter. If not otherwise provided in the articles or bylaws, distributions shall 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 the contributions have been accepted by the cooperative.

(7) REACQUISITION OF NONPATRON MEMBERSHIP INTERESTS AFTER DISSENT. Unless the articles or bylaws provide otherwise, a nonpatron member may force the cooperative to acquire the member's nonpatron membership interests as provided under this subsection if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences applicable to the nonpatron membership interests of the nonpatron member. If approval of the amendment is not required of the members, the nonpatron member shall file a notice of dissent and intent to demand fair value of the membership interests with the cooperative within 30 days after the date on which notice of the amendment is given to members. If approval of the amendment is required of the members, the nonpatron member shall file a notice of dissent and intent to demand fair value of the membership interests with the cooperative before the vote on the proposed amendment and shall not vote in favor of the proposed amendment. After receipt of a notice under this subsection and, if applicable, after approval of the amendment, the cooperative shall rescind the amendment within 60 days after receipt of the notice or acquire the membership interests by paying the fair value of the membership interests to the dissenting member within 180 days after receipt of the notice. Upon acquiring the membership interests, the cooperative may hold the interests to be reissued or may retire and cancel the interests.

History: 2005 a. 441.

193.605 Cooperative securities. (1) APPLICABILITY OF CH. 408 TO COOPERATIVE SECURITIES. To the extent that the provisions of this chapter concerning the authorization, issuance, control, use, and rights of membership interests or concerning the stock of a cooperative are inconsistent with ch. 408, the provisions of this chapter apply.

(2) LIABILITY OF COOPERATIVE FOR WRONGFUL TRANSFERS OF ITS SECURITIES. (a) In this subsection:

1. "Proper person" means the registered owner or last prior transferee, whether or not described as fiduciary for another, or his or her authorized agent or legal representative or the successor to his or her interest by operation of law.

2. "Transfer" includes a redemption or recall of stock.

3. "Wrongful transfer" means a transfer which is in excess of the authorization or capacity of the transferor, or which is made in breach of the transferor's fiduciary duty.

(b) A cooperative may not be held liable for acting upon wrongful transfers of its securities which are not "securities" as defined in s. 408.102, unless it has notice that the certificate was not transferred by a proper person or has notice that the transfer was a wrongful transfer.

(3) MISSING SECURITIES OR RECORDS. (a) When a security issued by a cooperative, which is not a "security" as defined in s. 408.102, is missing, the cooperative shall issue a duplicate security if the owner so requests and furnishes an indemnity acceptable to the cooperative.

(b) When records showing ownership of securities or apportionment of equity or membership interests are missing and the information therein contained is necessary to a proposed redemption of the interest, the cooperative may give notice and redeem by satisfying all of the following:

1. The cooperative shall set aside an amount equal to the value of the interests to be redeemed.

2. The cooperative shall give notice of such redemption to all owners of interests of which the cooperative has knowledge.

3. If there are interests, the ownership of which is unknown to the cooperative, it shall publish notice of the redemption at least once a month for 4 months in a publication circulated among members of cooperatives in the area, and also publish a class 3 notice, under ch. 985.

History: 2005 a. 441.

193.611 Assignment of financial rights. (1) ASSIGNMENT OF FINANCIAL RIGHTS PERMITTED. Except as provided in sub. (3), a member's financial rights in a cooperative are transferable in whole or in part.

(2) EFFECT OF ASSIGNMENT OF FINANCIAL RIGHTS. An assignment of a member's financial rights under sub. (1) 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 under sub. (1) 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 may not allow the assignee to control the member's exercise of governance or voting rights.

(3) RESTRICTIONS ON ASSIGNMENT OF FINANCIAL RIGHTS. (a) A restriction on the assignment of financial rights in a cooperative may be imposed in the articles, in the bylaws, in a member control agreement, by a resolution adopted by the members at a members' meeting, or by an agreement among members and the cooperative. A restriction is not binding with respect to financial rights reflected in the required 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.

(b) Subject to par. (c), a restriction under par. (a) is enforceable only if the restriction is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records of the cooperative. Such a restriction 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.

(c) A restriction on an assignment of financial rights under par. (a) which is otherwise valid and in effect at the time of the issuance of a statement of membership interest issued by the cooperative under s. 193.615 but which is not reflected in that statement is ineffective against an assignee who takes an assignment in reliance on the statement.

(d) 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 ch. 408, without the consent or approval of the member whose financial rights are subject to the security interest.

History: 2005 a. 441.

193.615 Nature and terms of a membership interest and statement of interest owned. (1) GENERALLY. A membership interest is personal property. A membership interest does not give the owner of the interest any interest in specific cooperative property. All property of the cooperative is property of the cooperative itself.

(2) STATEMENT OF MEMBERSHIP INTEREST. At the request of any member, the cooperative shall state in writing the particular membership interest owned by that member as of the date the cooperative makes the statement. The statement shall describe the member's rights to vote, if any, and to share in profits, losses, and distributions, restrictions on assignments of the member's financial rights under s. 193.611 (3) or voting rights under s. 193.555, and any assignment of the member's rights then in effect other than a security interest.

(3) TERMS OF MEMBERSHIP INTERESTS GENERALLY. (a) All the membership interests of a cooperative shall satisfy all of the following:

1. Unless the articles or bylaws provide otherwise, the membership interests shall be of one class, without series.

2. The membership interests shall be patron membership interests and, if authorized, nonpatron membership interests subject to this chapter entitled to vote as provided in s. 193.555, and have equal rights and preferences in all matters not otherwise provided for by the board unless and to the extent that the articles or bylaws have fixed the relative rights and preferences of different classes and series.

(b) All of the following apply to the rights and preferences of a class or series of membership interests:

1. The rights and preferences may be made dependent upon facts ascertainable outside the articles or bylaws, or outside the resolution or resolutions under sub. (5) establishing the class or series, if the manner in which the facts operate upon the rights and preferences is clearly and expressly set forth in the articles or bylaws or in the resolution or resolutions establishing the class or series.

2. The rights and preferences may 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 office a copy of the agreements, contracts, or other arrangements or the portions thereof included by reference.

(c) If specified in the articles or bylaws, or the resolution under sub. (5) establishing the class or series, all of the following apply to membership interests of a class or series:

1. The membership interests are subject to the right of the cooperative to redeem any of those membership interests at a price fixed in the articles or bylaws or by the board.

2. Owners of the membership interests may receive cumulative, partially cumulative, or noncumulative distributions.

3. The membership interests may have preference over any other class or series of membership interests for the payment of distributions.

4. The membership interests may be convertible into membership interests of any other class or series.

5. The membership interests may have full, partial, or no voting rights, except as provided in s. 193.555.

(4) RIGHTS OF JUDGMENT CREDITOR. On application to the circuit court by any judgment creditor of a member, the court may order the payment of the unsatisfied amount of the judgment from a member's or an assignee's financial rights. Such a judgment creditor has only the rights of an assignee of a member's financial rights under s. 193.611. This subsection is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest. This subsection does not deprive any member or assignee of financial rights of the benefit of any exemption under s. 815.18 applicable to the membership interest.

(5) BOARD AUTHORITY TO FIX TERMS. (a) If permitted under the bylaws, the board may adopt a resolution establishing a class or series of membership interests, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series, consistent with this chapter. A resolution under this paragraph takes effect on the 3rd day after the date on which the statement required under par. (b) is given to the members, as determined by the board.

(b) The cooperative may not accept contributions for any membership interests established by resolution under par. (a) until the board gives the members a statement setting forth the name of the cooperative, the text of the resolution, and the date on which the resolution was adopted.

(7) SECURITY INTEREST IN COOPERATIVE SECURITIES. For the purpose of any law relating to security interests, a membership interest, governance or voting rights, and financial rights are each to be characterized as provided in s. 408.103 (3).

(8) POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER AND OTHER FIDUCIARIES. (a) Except as provided in par. (b), if a member who is an individual dies or a court adjudges the member to be incompetent to manage his or her person or property, or an order for relief under a judgment of 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 rights applicable to the member's membership interest for the purpose of settling the estate or administering the member's property. Except as provided in par. (b), if a member is not an individual and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the member's legal representative or successor may exercise all of the rights applicable to the member's membership interest.

(b) Subject to the articles and bylaws, if an event described in par. (a) causes the termination of a member's membership interest and the termination does not result in dissolution of the cooperative, the terminated member's interest is considered to be that of an assignee of financial rights under s. 193.611 and the rights to be exercised by the executor, administrator, guardian, conservator, trustee, legal representative, or successor are limited accordingly.

(9) LIABILITY OF SUBSCRIBERS AND MEMBERS WITH RESPECT TO 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.

History: 2005 a. 441.

193.621 Certificated membership interests. (1) CERTIFICATED INTERESTS AUTHORIZED. A membership interest of a cooperative may be certificated. The cooperative shall provide each holder of a certificated membership interest with a certificate of membership interest under sub. (2).

(2) REQUIREMENTS OF CERTIFICATE; GENERALLY. (a) A certificate of membership interest shall be signed by an agent or officer authorized in the articles or bylaws to sign the certificate or, in the absence of such an authorization, by the chairperson of the board or the records officer of the cooperative. If the person who signs the certificate subsequently ceases to have the capacity to sign the certificate before the certificate is issued, the cooperative may issue the certificate with the same effect as if the person had that capacity on the date of its issue.

(b) A certificate of membership interest shall contain all of the following information on the certificate's face:

1. The name of the cooperative.

2. A statement that the cooperative is organized under the laws of this state and this chapter.

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 membership interests are subject to the articles and bylaws.

6. Any restrictions on transfer of the membership interests that the certificate represents, including any requirement for the approval of the board and first rights to purchase by the cooperative. Notwithstanding any other provision of this subsection, the information required under this subdivision may be stated by reference to the back of the certificate or to another document.

(3) REQUIREMENTS OF CERTIFICATE; MULTIPLE SERIES OR CLASSES. A certificate of membership interest representing a membership interest issued by a cooperative that is authorized to issue membership interests of more than one class or series shall set forth upon the face or back of the certificate, or shall state 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.

(4) PRIMA FACIE EVIDENCE. A certificate of membership interest issued under this section is prima facie evidence of the ownership of the membership interest that the certificate represents.

(5) UNCERTIFICATED MEMBERSHIP INTERESTS AUTHORIZED. Unless uncertificated membership interests are prohibited by the articles or bylaws, the board may adopt a resolution permitting uncertificated membership interests. Such a resolution does not apply to a membership interest represented by a certificate until the certificate is surrendered to the cooperative. Within a reasonable time after the issuance or transfer of an uncertificated membership interest, the cooperative shall send to the new member a statement containing the information required under sub. (2) (b) and (3) to be stated on certificates, unless the cooperative is publicly held and has adopted a system of issuance, recordation, and transfer of its membership interests by electronic or other means not involving an issuance of certificates, in compliance with section 17A of the Securities Exchange Act of 1934.

(6) COMPARABLE RIGHTS. Except as otherwise provided under this chapter, the rights and obligations of holders of certificated membership interests are identical to the rights and obligations of holders of uncertificated membership interests of the same class and series.

History: 2005 a. 441.

193.625 Replacement certificates. (1) ISSUANCE. A cooperative may issue a replacement certificate of membership interest under s. 193.621 using the procedure specified in s. 408.405 (1), if the owner of the membership interest represented in a certificate claims that the certificate has been lost, destroyed or wrongfully taken.

(2) NOT AN OVERISSUE. The issuance of a replacement certificate under sub. (1) is not an overissue of the membership interest it represents.

History: 2005 a. 441.

193.631 Restriction on transfer or registration of membership interests. (1) HOW IMPOSED. A restriction on the transfer, including registration, of a membership interest may be imposed in the articles, in the bylaws, in a member control agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the cooperative. A restriction imposed by a member control agreement or other written action of members is effective only against the parties to the agreement or written action or the members who assent pursuant to a member resolution. 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.

(2) RESTRICTIONS PERMITTED. (a) A restriction under sub. (1) is enforceable only if the restriction is not manifestly unreasonable under the circumstances and any of the following apply:

1. The restriction is noted conspicuously on a certificate of membership interest representing the membership interest or the existence of the restriction is noted on the certificate and reference is made to a separate document creating or describing the restriction.

2. The restriction is imposed under this chapter or is included in the articles or bylaws.

3. The restriction relates to an uncertificated membership interest and is included in information sent to the holders of such a membership interest.

(b) A restriction that is enforceable under par. (a) may be enforced against the holder of the restricted membership interest or a successor or transferee of the holder, including a pledgee or a legal representative.

History: 2005 a. 441.

SUBCHAPTER VII

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

193.701 Authorization, form, and acceptance. (1) BOARD MAY AUTHORIZE. If authorized by the board, a cooperative may accept contributions, make contribution agreements under s. 193.711, and make contribution rights agreements under s. 193.715.

(2) PERMISSIBLE FORMS. A person may make a contribution to a cooperative by any of the following means:

(a) 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.

(b) Through a written obligation that is signed by the person and requires 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.

(3) ACCEPTANCE OF CONTRIBUTIONS. No purported contribution is to be treated as or considered to be a contribution, unless all of the following apply:

(a) 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.

(b) The acceptance of the contribution and the contribution's accorded value are both reflected in the required records of the cooperative.

History: 2005 a. 441.

193.702 Valuation; presumption and liability. The determinations of the board as to a contribution's accorded value under s. 193.701 (3) (a) and the fairness to the cooperative of a contribution and any terms of payment or performance applicable to the contribution, the terms of any contribution agreement under s. 193.711, and the terms of any contribution rights agreement under s. 193.715 are presumed to be proper if the determinations are made in good faith and on the basis of methods that are reasonable under 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 who 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 members then existing who did not consent to and are damaged by the consideration or overvaluing of property or services, to the extent of the damages to those members. A director against whom a claim is asserted pursuant to this section, 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 section.

History: 2005 a. 441.

193.705 Restated value of previous contributions. **(1)** DEFINITION. In this section, "old contributions" means all contributions reflected in the required records of a cooperative immediately before the time the cooperative accepts a new contribution.

(2) RESTATEMENT REQUIRED. If a cooperative accepts a new contribution, the board shall restate the value of all old contributions.

(3) RESTATEMENT METHOD FOR SAME SERIES OR CLASS. (a) Unless otherwise provided in the articles or bylaws, the board shall restate the value of old contributions of the same series or class of the new contribution by following all of the following steps in numerical order:

1. State the value accorded to the new contribution under s. 193.701 (3) (a).

2. Determine what the total value will be, after the restatement under this subsection, of all contributions of same series or class as the new contribution.

3. Subtract the value stated under subd. 1. from the value determined under subd. 2., yielding the total value, after the restatement under this subsection, of all the old contributions of the particular series or class.

4. Subtract the value, as reflected in the required records before the restatement under this subsection, of the old contributions from the value determined under subd. 3., yielding the value to be allocated among and added to the old contributions of the particular series or class.

5. Allocate the value determined under subd. 4. proportionally among the old contributions of the particular series or class, add the allocated values to the values of those old contributions, and change the required records accordingly.

(b) The values determined under par. (a) 4. and allocated and added under par. (a) 5. may be positive, negative, or zero.

(4) RESTATEMENT METHOD FOR DIFFERENT SERIES OR CLASS. Unless otherwise provided in the articles or bylaws, the board shall restate the value of old contributions of a series or class different from that of the new contribution by following all of the following steps in alphanumerical order:

(a) Determine the percentage by which any restatement under sub. (3) has changed the total contribution value reflected in the required records for the series or class of the new contribution.

(b) As to each old contribution of a different series or class, change the value reflected in the required records by the percentage determined under par. (a). The percentage determined under par. (a) may be positive, negative, or zero.

(5) AGGREGATING NEW CONTRIBUTIONS. If a cooperative accepts more than one new contribution of the same series or class at the same time, then for the purpose of the restatement required by this section the board may consider all such new contributions as if they were a single contribution.

History: 2005 a. 441.

193.711 Contribution agreements. **(1g)** CONTRIBUTION AGREEMENTS PERMITTED. Pursuant to s. 193.701 (1), a cooperative and a member or potential member may enter into an agreement requiring the member or potential member to contribute goods, services, or money to the cooperative as a condition of membership or receipt of a membership interest.

(1r) SIGNED WRITING REQUIRED. A contribution agreement shall be in writing and signed by each person required to make a contribution under the agreement.

(2) AGREEMENT IRREVOCABLE FOR DEFINITE PERIOD; EXCEPTIONS. A contribution agreement is irrevocable for a period of 6 months, unless otherwise provided in the contribution agreement or unless each person required to make a contribution under the agreement and, if in existence, the cooperative, consents to a different period of irrevocability.

(3) TIME OF PERFORMANCE UNDER AGREEMENT. Unless the contribution agreement provides otherwise, all payments or other actions required under the agreement shall be made or taken at the time or times determined by the board, except that a call made by the board for a person to make a payment or perform an action required under the agreement shall be uniform for all membership interests of the same class or series.

(4) FAILURE TO PERFORM; REMEDIES. (a) Unless the contribution agreement provides otherwise, if a person fails to make a payment required under the contribution agreement, the cooperative may bring an action for breach of contract, sell any membership interests that are subject to the contribution agreement pursuant to par. (b) and bring an action to collect any deficiency, or cancel the contribution agreement pursuant to par. (c). If a person fails to make a required contribution of property or services, the person shall pay to the cooperative an amount equal to that portion of the value of the contribution that has not been made, as stated in the cooperative's required records.

(b) To the extent provided in par. (a), the cooperative may cancel the membership interests of any person who defaults on a contribution agreement and sell any membership interests that are subject to a contribution agreement if the amount due under the contribution agreement relating to those membership interests remains unpaid for a period of 20 days after the cooperative gives written notice of demand for payment to the person required to make the payment. The total offering price of the membership interests in such a sale shall be at least the amount of the balance owed by the person, plus the expenses incidental to the sale. If membership interests are sold pursuant to this paragraph, the cooperative shall pay to the person, or that person's legal representative, the lesser of the following:

1. The amount by which the proceeds of the sale, less the expenses incident to the sale and any additional amounts the person is required to pay under the terms of the contribution agreement as a result of the default, exceeds the amount of the payment the person failed to make.

2. The total amount paid by the person under the contribution agreement.

(c) To the extent provided in par. (a), the cooperative may cancel a contribution agreement if the amount due under the contribution agreement remains unpaid for a period of 20 days after the cooperative gives written notice of demand for payment to the person required to make the payment. Unless the contribution agreement provides otherwise, if the cooperative cancels a contribution agreement pursuant to this paragraph, the cooperative may retain any payments made as provided in the contribution agreement.

(5) RESTRICTIONS ON ASSIGNMENT. Unless the articles or bylaws provide otherwise, a person may not assign, in whole or in part, that person's rights under a contribution agreement to a person who is not a member at the time of the assignment, unless all the members consent to the assignment in writing.

History: 2005 a. 441.

193.715 Contribution rights agreements. **(1)** CONTRIBUTION RIGHTS AGREEMENTS PERMITTED. Pursuant to s. 193.701 (1) and subject to any restrictions in the articles or bylaws, a cooperative may enter into an agreement that provides a person rights to contribute goods, services, or money to the cooperative.

(2) WRITING REQUIRED; TERMS INCLUDED BY REFERENCE. A contribution rights agreement shall be in writing. Terms of the agreement may be included by reference.

(3) RESTRICTIONS ON ASSIGNMENT. Unless the articles or bylaws provide otherwise, a person may not assign, in whole or in part, that person's rights under a contribution rights agreement to a person who is not a member at the time of the assignment, unless all the members consent to the assignment in writing.

History: 2005 a. 441.

193.721 Allocations of profits and distributions of cash and other assets. (1) ALLOCATION OF PROFITS AND LOSSES. Except as otherwise provided in this subsection and the articles or bylaws, profits and losses shall be allocated between patron membership interests collectively and nonpatron membership interests collectively on the basis of the value of contributions received from patron membership interests collectively and nonpatron membership interests collectively. The allocation of profits to patron membership interests collectively in a fiscal year may not be less than 51 percent of the total profits for that fiscal year, except that the allocation of profits to patron membership interests collectively in a fiscal year may not be less than 30 percent of the total profits for that fiscal year if any of the following apply:

(a) The articles were amended to provide for the reduced percentage and, notwithstanding s. 193.221 (1) and (3), the amendment was approved by the affirmative vote of the patron members.

(b) The bylaws provide for the reduced percentage and were approved by an affirmative vote of the patron members.

(c) The bylaws were amended to provide for the reduced percentage and the amendment was approved by the affirmative vote of the patron members.

(2) DISTRIBUTION OF CASH OR OTHER ASSETS. If not stated in the articles, the bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. Unless the articles or bylaws provide otherwise, the cooperative shall distribute cash or other assets to patron membership interests collectively and nonpatron membership interests collectively on the basis of the value of contributions received by the cooperative from patron membership interests collectively and nonpatron membership interests collectively. The distributions to patron membership interests collectively in any fiscal year may not be less than 51 percent of the total distributions for that fiscal year, except that distributions to patron membership interests collectively in a fiscal year may not be less than 30 percent of the total distributions for that fiscal year if any of the following apply:

(a) The articles provide for the reduced percentage and that provision was not included in the articles via amendment under s. 193.221 (3).

(b) The bylaws provide for the reduced percentage and were adopted by an affirmative vote of the members.

(c) The bylaws were amended to provide for the reduced percentage and the amendment was adopted by the affirmative vote of the members.

History: 2005 a. 441.

193.725 Allocations and distributions of profits to patron members. (1) CAPITAL RESERVES. A cooperative may set aside any portion of profits allocated to the patron membership interests that the board determines is advisable for the purpose of creating or maintaining a capital reserve.

(2) OTHER RESERVES. The board may do any of the following with regard to profits allocated to the patron membership interests:

(a) Set aside an amount not to exceed 5 percent of the annual profits of the cooperative for promoting and encouraging cooperative organization.

(b) Establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(3) PATRONAGE DISTRIBUTIONS. Profits allocated to patron members in excess of dividends on equity and additions to reserves shall be allocated and distributed to patron members on the basis of patronage and, if the bylaws provide, to nonmember patrons as so provided. A cooperative may establish allocation units and pooling arrangements and may account for and distribute profits to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the losses of an allocation unit or pooling arrangement against the profits of other allocation units or pooling arrangements.

(4) FREQUENCY OF DISTRIBUTION. A cooperative shall make distributions under sub. (3) at least annually.

(5) FORM OF DISTRIBUTION. A cooperative may make distributions under sub. (3) in the form of cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

(7) PATRONAGE CREDITS FOR INELIGIBLE MEMBERS. If a nonmember patron with patronage credits is not qualified or eligible for membership, the cooperative may credit to the nonmember patron's account a refund due to the nonmember patron. The board may issue a certificate of interest to reflect any such credit and, after the board issues such a certificate, the patron may receive distributions of profits in the same manner as a patron member.

History: 2005 a. 441.

193.731 Member control agreements. (1) AUTHORIZATION AND EXECUTION. Except as otherwise provided in this subsection, any person who has entered into a contribution agreement under s. 193.711 or an agreement to purchase cooperative securities, or any member, may enter into a written agreement with the cooperative that relates to the control of or the liquidation, dissolution, or termination of the cooperative, or any phase of the business and affairs of the cooperative. Such an agreement may not take effect unless signed by all persons who are then members and all persons who have entered into contribution agreements. An agreement under this subsection may not relate to patron member voting control under s. 193.545 or patron member allocation and distribution provisions under s. 193.721.

(2) SAME EFFECT AS ARTICLES AND BYLAWS. Wherever this chapter provides that a particular result may or shall be obtained through a provision in the articles or bylaws, the same result may be accomplished through a provision in an agreement under sub. (1) or a procedure established in such an agreement.

(3) OTHER AGREEMENTS NOT AFFECTED. This section does not limit the authority of persons to enter into agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described.

History: 2005 a. 441.

193.735 Distribution of unclaimed property. (1) ALTERNATE PROCEDURE TO DISTRIBUTE PROPERTY. Notwithstanding s. 177.17 (4) (a) 2. and (b), a cooperative may distribute any property required to be reported under s. 177.17 (1) to an entity that is exempt from taxation under section 501 (a) of the Internal Revenue Code. A cooperative making a distribution under this subsection shall file all of the following with the secretary of revenue before making the distribution:

(a) A verified written description and explanation of the distribution.

(c) The name, address, and exemption number of the entity to which the property is to be distributed.

(d) The approximate date of the distribution.

(2) REPORTING PROCEDURE NOT AFFECTED. Subsection (1) does not affect the requirement that a cooperative report property under s. 177.17 (1).

(3) OWNER'S RIGHT EXTINGUISHED ON DISBURSEMENT. The articles or bylaws may provide that a distribution under sub. (1) extinguishes all rights of the owner in and to the distributed property.

History: 2005 a. 441; 2013 a. 20.

SUBCHAPTER VIII

MERGER AND CONSOLIDATION

193.801 Merger and consolidation. (1) AUTHORIZATION. Unless otherwise prohibited and except as otherwise provided in this subsection, a cooperative may merge or consolidate with a business entity by complying with this section and the applicable law of the jurisdiction under whose laws the surviving business entity will be organized. A cooperative may not merge or consolidate with a business entity organized under the laws of this state, other than an association, unless the law governing the business entity specifically authorizes merger or consolidation with a cooperative.

(2) PLAN. To initiate a merger or consolidation, the board shall prepare a written plan stating all of the following:

(a) The name of the cooperative and each business entity that is party to the merger or consolidation.

(b) The name of the business entity that will survive the merger or consolidation.

(c) The manner and basis of converting membership or ownership interests in the cooperative and each business entity that is party to the merger or consolidation into membership or ownership interests in the surviving business entity, money, or other property.

(d) The terms of the merger or consolidation.

(e) The proposed effect of the merger or consolidation on the members of each association that is party to the merger or consolidation.

(f) For a consolidation, the contents of the articles or other organizational documents of the surviving business entity which will be filed with the jurisdiction in which the surviving business entity is organized.

(3) NOTICE. (a) The board shall give notice of the merger or consolidation to each member. The notice shall contain all of the following:

1. The full text of the plan under sub. (2).

2. The time and place of the meeting at which the plan will be considered.

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

(4) ADOPTION OF PLAN; ARTICLES OF MERGER OR CONSOLIDATION. (a) If a quorum of the members eligible to vote is registered as being present or represented by alternative vote at the meeting specified in the notice under sub. (3), the plan of merger or consolidation may be adopted by the following means, as applicable:

1. By a majority of the votes cast.

2. For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, by a sufficient vote as required under the articles or bylaws or by satisfying the other conditions for approval.

(b) If a plan is adopted under par. (a), the chairperson, vice−chairperson, records officer, or documents officer of each association that is party to the merger or consolidation shall execute articles of merger or consolidation which state the plan and the fact that the plan was adopted. The business entity surviving the merger or consolidation shall file the articles of merger with the department. If the business entity surviving the merger or consolidation is organized under the laws of this state, the department shall issue a certificate of organization to the business entity.

History: 2005 a. 441.

193.805 Merger of subsidiary or parent. (1) WHEN AUTHORIZED; PLAN OF MERGER. (a) Except as otherwise provided in this paragraph, a parent cooperative that owns at least 90 percent of the outstanding ownership interests of each class and series of a subsidiary business entity, other than ownership interests that, absent this section, would not be entitled to vote on a merger, may merge the subsidiary into the parent or the parent into the subsidiary without a vote of the members of the parent or the members of the subsidiary by complying with this section and the applicable law of the jurisdiction under whose laws the business entity surviving the merger will be organized. Except as otherwise provided in this paragraph, a parent cooperative that owns at least 90 percent of the outstanding ownership interests of each class and series of 2 or more subsidiary business entities, other than ownership interests that, absent this section, would not be entitled to vote on a merger, may merge the subsidiaries into one another without a vote of the members of the parent or the members of the subsidiaries by complying with this section and the applicable law of the jurisdiction under whose laws the business entity surviving the merger will be organized. This paragraph does not permit a cooperative to merge with a business entity organized under the laws of this state, other than an association, unless the law governing the business entity specifically authorizes merger with a cooperative.

(b) To initiate a merger under par. (a), the board shall prepare a written plan stating all of the following:

1. The name of each subsidiary that is party to the merger, the name of the parent, and the name of the business entity surviving the merger.

2. Except as provided in subd. 3., the manner and basis of converting membership or ownership interests in the parent and each subsidiary that is party to the merger, as applicable, into membership or ownership interests in the surviving business entity, money, or other property.

3. If the parent is party to the merger but is not the surviving business entity and if the surviving business entity is a cooperative, a provision for the pro rata issuance of membership interests of the surviving business entity to the holders of membership interests in the parent on surrender of any certificates for shares of the parent.

4. If the surviving business entity is a subsidiary cooperative, a statement of any amendments to the articles of the surviving business entity that will be part of the merger.

(c) If the parent is party to the merger but is not the surviving business entity, the plan under par. (b) shall be approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting.

(2) NOTICE. No later than 10 days after the effective date of the merger, the board of the parent shall give notice of the merger, including a copy of the plan of merger, to each member of each subsidiary that is party to the merger.

(3) ARTICLES OF MERGER. The board of the parent shall file with the department articles of merger, signed by the chairperson or his or her designee, containing all of the following:

(a) The plan of merger.

(b) The number of outstanding membership interests of each class and series of each subsidiary that is party to the merger, other than the classes or series that, absent this section, would not be entitled to vote on a merger, and the number of such membership interests owned by the parent.

(c) A statement that the plan of merger has been approved by the parent under this section.

(5) CERTIFICATE. If the business entity surviving the merger is organized under the laws of this state, the department shall issue a certificate of organization to the business entity upon receipt of the articles of merger.

(6) RIGHTS OF DISSENTING OWNERS. If, immediately prior to a merger under this section, a business entity that is party to the merger is owned, at least in part, by persons other than the parent or an affiliate of the parent, those persons have dissenters' rights under the law governing that business entity's organization.

(7) NONEXCLUSIVITY. Mergers authorized under sub. (1) (a) may instead be accomplished under s. 193.801, in which case this section does not apply.

History: 2005 a. 441.

193.807 Effective date; effect of merger or consolidation. (1) EFFECTIVE DATE. Unless a later date is provided in the plan of merger or consolidation or is required under other applicable law, a merger or consolidation is effective when the articles of merger or consolidation are filed with the department.

(2) EFFECT OF MERGER OR CONSOLIDATION. All of the following occur when a merger or consolidation takes effect:

(a) All business entities that are party to the merger or consolidation become the business entity surviving the merger or consolidation, as designated in the plan, and the separate existence of every business entity that is party to the merger or consolidation, except the business entity surviving the merger or consolidation, ceases.

(b) The title to all property owned by each business entity that is party to the merger or consolidation is vested in the surviving business entity without reversion or impairment.

(c) If, under the laws applicable to a business entity that is a party to the merger or consolidation, one or more of the owners thereof is liable for the debts and obligations of such business entity, such owner or owners shall continue to be liable for the debts and obligations of the business entity, but only for such debts and obligations accrued during the period or periods in which such laws are applicable to such owner or owners. This paragraph does not affect liability under any taxation laws.

(d) If, under the laws applicable to the surviving business entity, one or more of the owners thereof is liable for the debts and obligations of such business entity, the owner or owners of a business entity that is party to the merger, other than the surviving business entity, who become subject to such laws shall be liable for the debts and obligations of the surviving business entity to the extent provided in such laws, but only for such debts and obligations accrued after the merger or consolidation. The owner or owners of the surviving business entity prior to the merger shall continue to be liable for the debts and obligations of the surviving business entity to the extent provided in par. (c). This paragraph does not affect liability under any taxation laws.

(e) The surviving business entity has all liabilities of each business entity that is party to the merger or consolidation.

(f) A civil, criminal, administrative, or investigatory proceeding pending by or against any business entity that is a party to the merger or consolidation may be continued as if the merger or consolidation did not occur, or the surviving business entity may be substituted in the proceeding for the business entity whose existence ceased.

(g) The articles or other similar governing document of the surviving business entity shall be amended to the extent provided in the plan.

(h) The interests of each business entity that is party to the merger that are to be converted into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property are converted, and the former holders of the interests are entitled only to the rights provided in the articles of merger or consolidation to their dissenters' rights under the laws applicable to each business entity that is party to the merger.

History: 2005 a. 441.

193.835 Abandonment of merger. (1) AUTHORITY AND PROCEDURE. A merger may be abandoned before it takes effect by any of the following means:

(b) An abandonment may be approved at a meeting by the affirmative vote of the holders of a majority of the voting power of the membership interests of each cooperative that is party to the merger who are entitled to vote on the approval of the plan of merger, except that the board of a cooperative that is party to the merger may approve the abandonment if no members of that cooperative are entitled to vote. In addition to the other requirements of this paragraph, if a business entity other than a cooperative is party to the merger, an abandonment may only be approved by taking any actions to approve the abandonment that are required by the laws under which the business entity is organized.

(c) An abandonment may be approved as provided in the plan of merger.

(d) An abandonment may be approved by adoption, by the board of any cooperative that is party to the merger, of a resolution abandoning the merger, subject to the contract rights of any other person under the plan of merger. If a business entity other than a cooperative is party to the merger, an abandonment may be approved by a resolution of the governing body of the business entity adopted according to the laws under which the business entity is organized, subject to the contract rights of any other person under the plan of merger.

(2) ARTICLES OF ABANDONMENT. The board or other governing body of any business entity that approves an abandonment under sub. (1) shall file with the department articles of abandonment that contain all of the following:

(a) The names of the business entities that were party to the proposed merger.

(b) The provisions under sub. (1) under which the proposed merger is abandoned.

(c) If the proposed merger is abandoned under sub. (1) (d), the text of the resolution approving the abandonment.

History: 2005 a. 441.

SUBCHAPTER IX

DISSOLUTION

193.905 Voluntary dissolution; winding up. (1) NOTICE OF DISSOLUTION. To initiate a voluntary dissolution the board shall file with the department a notice of intent to dissolve. The board may not file a notice under this subsection unless the notice is approved by affirmative vote of the members.

(1m) COLLECTION AND PAYMENT OF DEBTS. After a notice is filed under sub. (1), the board shall proceed as soon as possible to collect, or make provision for the collection of, all unpaid subscriptions for shares and all other debts owing to the cooperative and pay, or make provision for the payment of, all debts, obligations, and liabilities of the cooperative according to the priority accorded to the debts, obligation, and liabilities, by law.

(2) TRANSFER OF ASSETS. After a notice is filed under sub. (1), the board may lease or dispose of all or substantially all of the property and assets of the cooperative without a vote of the members.

(3) DISTRIBUTION TO MEMBERS AND FORMER MEMBERS. Any property of the cooperative remaining after discharge of the cooperative's debts, obligations, and liabilities may be distributed to the members and former members as provided in the bylaws.

(4) UNCLAIMED ASSETS. (a) If the articles or bylaws so provide, assets distributable in the course of the dissolution of a cooperative that remain unclaimed as provided in this paragraph may be forfeited to the cooperative in the manner set forth in s. 185.03 (10), except that the board, a committee designated by the board to liquidate the cooperative's assets, or a court, trustee, or other person authorized to liquidate the assets of the cooperative may declare the funds forfeited, give the notice, determine the purpose or purposes, and dedicate the funds as provided under s. 185.03 (10) and except that any of these persons may declare the funds forfeited no earlier than 2 years and no later than 5 years after the funds are first made available to their owners in the course of the liquidation of the cooperative.

(b) Assets distributable in the course of the dissolution of a cooperative that are not forfeited under par. (a) shall be reported and delivered to the secretary of revenue as provided under ch. 177.

(5) ARTICLES OF DISSOLUTION. After payment of all debts, obligations, and liabilities of the cooperative has been made or pro-

vided for as required under sub. (1m) and the remaining property of the cooperative has been distributed as provided under sub. (3) or otherwise disposed of under sub. (4), the board shall file with the department articles of dissolution. The articles of dissolution shall state all of the following, as applicable:

(a) That all debts, obligations, and liabilities of the cooperative have been paid or adequate provisions have been made for their payment or time periods during which claims may be made against the cooperative have expired and no other claims are outstanding.

(b) That the remaining assets of the cooperative have been distributed to the members, pursuant to a liquidation authorized by the members, or as provided under sub. (4).

(c) That legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order, or decree that may be entered against the cooperative in such a pending proceeding.

(6) EFFECTIVE DATE. A cooperative is dissolved upon the filing of the articles of dissolution as required under sub. (5).

(7) CERTIFICATE. Upon accepting articles of dissolution for filing, the department shall issue to the dissolved cooperative or its legal representative a certificate of dissolution that contains all of the following:

(a) The name of the dissolved cooperative.

(b) The date the articles of dissolution were filed with the department.

(c) A statement that the cooperative is dissolved.

History: 2005 a. 441; 2013 a. 20.

193.911 Revocation of dissolution proceedings. **(1)** AUTHORITY TO REVOKE. Dissolution proceedings under s. 193.905 may be revoked before the articles of dissolution are filed with the department as required under s. 193.905 (5).

(2) REVOCATION BY MEMBERS. The chairperson may call a members' meeting to submit to the members the question of revoking dissolution proceedings under s. 193.905. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the votes cast or, for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, by a sufficient vote as required under the articles or bylaws or by satisfying the other conditions for approval.

(3) FILING WITH THE DEPARTMENT. The chairperson of the board or the records officer shall file with the department a notice of revocation promptly after the revocation is approved as provided under sub. (2). The revocation is effective upon filing of the notice under this subsection.

History: 2005 a. 441.

193.925 Court−supervised voluntary dissolution. After a notice of intent to dissolve is filed as required under s. 193.905 (1) and before a certificate of dissolution is issued under s. 193.905 (7), the cooperative or, for good cause shown, a member or creditor of the cooperative may petition the circuit court for the county where the registered address of the cooperative is located to have the dissolution conducted under the supervision of the court. Section 193.905 does not apply to a dissolution conducted under the supervision of the court under this section. Section 193.911 applies to a dissolution conducted under the supervision of the court under this section. The court may grant equitable relief that it deems appropriate in a dissolution conducted under its supervision under this section, if the supervision resulted from an application by the cooperative.

History: 2005 a. 441.

193.931 Involuntary dissolution. **(1)** CAUSES OF ACTION. (a) A member may bring an action against a cooperative for dissolution, liquidation, and equitable relief if any of the following apply:

1. The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock.

2. The directors or those in control of the cooperative have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers.

3. For a period that includes the time when 2 consecutive regular members' meetings were held, the members failed to elect successors to directors whose terms expired or would have expired upon the election and qualification of their successors.

4. The cooperative's assets are being misapplied or wasted.

5. The cooperative's period of duration as provided in the articles has expired and has not been lawfully extended.

(b) A creditor may bring an action against a cooperative for dissolution, liquidation, and equitable relief if any of the following apply:

1. The creditor has obtained a money judgment against the cooperative and an execution on that judgment has been returned unsatisfied.

2. The cooperative has admitted in writing that a claim of the creditor against the cooperative is due and owing and that the cooperative is unable to pay its debts in the ordinary course of business.

(c) Except as provided in sub. (1m), the attorney general may bring an action against a cooperative for dissolution and liquidation, and for equitable relief for persons other than the attorney general, if any of the following apply:

1. The articles and certificate of organization of the cooperative were procured through fraud.

2. The cooperative was organized for a purpose prohibited by state law or not permitted by this chapter.

3. The cooperative has knowingly, with intentional disregard of the harm that the provision is intended to avert, violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter.

4. The actions of the cooperative, or its failure to act, constitutes surrender or abandonment of the business of the cooperative.

(1m) NOTICE TO COOPERATIVE BY ATTORNEY GENERAL. The attorney general may not commence an action under sub. (1) (c) until 30 days after giving notice to the cooperative of the reason for the action. If the reason for the action is an act that the cooperative has done or failed to do and the act or omission may be corrected by amending the articles or bylaws or by performing or abstaining from the act, the attorney general shall give the cooperative 30 additional days to make the correction before filing the action. If the cooperative makes the correction before the expiration of the 30 additional days, the attorney general may not bring an action under sub. (1) (c) based upon that act or omission.

(2) FINANCIAL CONDITION OF COOPERATIVE. In determining whether to order a remedy in an action under sub. (1), the court shall consider the financial condition of the cooperative. The court may not refuse to order a remedy solely on the ground that the cooperative has accumulated operating profits or current operating profits.

(3) ALTERNATIVE REMEDIES. In deciding whether to order dissolution in an action under sub. (1), the court shall consider whether other relief suggested by one or more parties would permanently remedy the cause of the action and, if so, may order such other relief.

(4) EXPENSES. If the court finds that a party to an action under sub. (1) has acted arbitrarily, vexatiously, or in bad faith, the court may award reasonable expenses, including attorney fees and disbursements, to any of the other parties.

(5) VENUE. An action under sub. (1) shall be brought in the circuit court for the county where the registered address of the cooperative is located.

(6) PARTIES. It is not necessary to make members parties to an action under sub. (1).

History: 2005 a. 441.

193.935 Procedure in involuntary or court−supervised voluntary dissolution. (1) ACTION BEFORE HEARING. In a dissolution conducted under the supervision of a court under s. 193.925 or in any action under s. 193.931 (1) the court may take any of the following actions before an initial hearing is completed:

(a) Issue injunctions.

(b) Appoint receivers temporarily, until the conclusion of a hearing under sub. (2), with all powers and duties that the court directs.

(c) Take actions required to preserve the cooperative's assets wherever located.

(d) Carry on the business of the cooperative.

(2) APPOINTMENT OF RECEIVER. In a dissolution conducted under the supervision of a court under s. 193.925 or in any action under s. 193.931 (1) the court may appoint a receiver after a hearing is completed, following notice to the parties as directed by the court. The receiver shall collect the cooperative's assets and amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. Subject to the order of the court, the receiver may continue the business of the cooperative and lease or dispose of the property and assets of the cooperative at public or private sale.

(3) DISTRIBUTION OF ASSETS. In a dissolution conducted under the supervision of a court under s. 193.925 or in any action under s. 193.931 (1), the court shall apply the assets of the cooperative and the proceeds resulting from the lease or disposition of the cooperative's property by following all of the following steps, in alphanumerical order:

(a) Applying the assets and proceeds to cover attorney fees and disbursements made in connection with the proceedings and the other costs and expenses of the proceedings.

(b) Applying the assets and proceeds to cover debts, taxes, and assessments owing to the United States, this state, and other states, in that order.

(c) Applying the assets and proceeds to cover worker's compensation claims for which the cooperative is liable under ch. 102, except that this paragraph does not apply to a claim if, at the time of injury, as defined in s. 102.01 (2) (g), the cooperative had in force a policy of worker's compensation insurance as required under s. 102.28 (2) (a).

(d) Applying the assets and proceeds to cover claims of employees for services performed within 3 months preceding the appointment of the receiver, if any.

(e) Applying the assets and proceeds to cover other claims proved and allowed.

(f) Distributing the assets and proceeds to the members or pursuant to a liquidation plan approved by the members.

History: 2005 a. 441.

193.941 Receiver qualifications and powers. (1) QUALIFICATIONS. A receiver appointed under s. 193.935 (1) or (2) shall be an individual, a domestic business entity, or a foreign business entity authorized to transact business in this state and shall give a bond as directed by the court with the sureties required by the court.

(2) POWERS. A receiver may bring and defend suits.

History: 2005 a. 441.

193.951 Filing claims in involuntary or court−supervised voluntary dissolution proceedings. (1) FILING UNDER OATH. In a dissolution conducted under the supervision of a court under s. 193.925 or in any action under s. 193.931 (1), the court may require all creditors and claimants of the cooperative to file their claims, under oath and in a form prescribed by the court, with the court or with a receiver appointed under s. 193.935 (1) or (2).

(2) DATE TO FILE A CLAIM; NOTICE. If the court requires the filing of claims in a dissolution conducted under the supervision of a court under s. 193.925 or in any action under s. 193.931 (1), the court shall do all of the following:

(a) Set a date at least 120 days after the date the order is filed, as the last day for the filing of claims.

(b) Prescribe a notice of the fixed date that shall be given to creditors and claimants.

(3) CLAIMS BARRED; EXTENSION OF TIME FOR FILING. The court may prohibit any person who fails to file a claim before the date established under sub. (2) (a) from claiming an interest in or receiving payment out of the property and assets of the cooperative. At any time before the date established under sub. (2) (a), the court may extend the time for filing claims beyond the date established under sub. (2) (a).

History: 2005 a. 441.

193.955 Discontinuance of court−supervised dissolution proceedings. A dissolution conducted under the supervision of a court under s. 193.925 or any action under s. 193.931 (1) may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver appointed under s. 193.935 (1) or (2), if any, to deliver to the cooperative its remaining property and assets.

History: 2005 a. 441.

193.961 Order of dissolution. (1) ISSUANCE; EFFECTIVE DATE. After distribution of a cooperative's assets and proceeds under s. 193.935 (3), the court shall issue an order dissolving the cooperative. The dissolution is effective upon issuance of the order.

(2) FILING. After the court issues an order under sub. (1), the court shall file a certified copy of the order with the department. The department may not charge a fee for filing the order.

History: 2005 a. 441.

193.971 Barring of claims. (1) CLAIMS BARRED. Except as provided in s. 193.951 (3), a creditor or claimant who does not file a claim or bring an action during the pendency of the dissolution proceedings or has not brought an action before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from bringing an action to collect on that claim or otherwise enforcing it, except as provided in this section.

(2) CERTAIN CLAIMS ALLOWED FOR GOOD CAUSE. Except as provided in s. 193.951 (3), within one year after the date on which the articles of dissolution are filed under s. 193.905 (5) or an order of dissolution is issued under s. 193.961, a creditor or claimant who shows good cause for not having previously filed the claim may apply to the circuit court to allow a claim against the cooperative's undistributed assets or, if the undistributed assets are not sufficient to satisfy the claim, against a person to the extent of the distributions received by that person in the dissolution by virtue of that person's status as a member.

(3) CERTAIN OMITTED CLAIMS ALLOWED. A person to whom is owed a debt, obligation, or liability incurred during an action under s. 193.931 (1), but who is not paid before the distribution of assets and proceeds under s. 193.935 (3) (f), may bring an action to recover on the claim against the officers, directors, or members of the cooperative before the expiration of the applicable statute of limitations.

History: 2005 a. 441.