

**The New  
Minnesota Cooperative Model:  
Providing Enhanced Investment  
Opportunities for Cooperative Members**

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# The New Minnesota Cooperative Law

- The New Minnesota Cooperative Law, Minnesota Statutes Chapter 308B, provides significant tools for patron members seeking outside equity capital for cooperative creation, modernization or expansion
- The law authorizes non-patron investment in return for limited voting rights in the cooperative

# The New Minnesota Cooperative Law

- Cooperatives provide producers with the opportunity to lead the cooperatives and share in the profits of a business they patronize
  - This returns profits to the local community
  - Cooperative laws in most states require producers to be treated equally as patron members with some limited exceptions (i.e. certain premiums for dairy producers)
  - Contrast this to producers who contract their production outside of a cooperative

# The New Minnesota Cooperative Law

- Economic Impact of Minnesota Cooperatives (Summer, 2003 USDA Rural Development study)
- 1,026 cooperative businesses in Minnesota; 496 coops responded
- Just under 2.5 million Minnesota members
- \$6.07 billion in annual revenues
- \$10.89 billion in output impacts
- Total employment of 79,363
- Tax revenues of \$210.5 million

# The New Minnesota Cooperative Law

- Cooperative percentage of national farm marketings (2001 USDA data)
  - Milk/Milk Products 83%
  - Grains/Oil Seeds 38%
  - Cotton/Cottonseed 42%
  - Fruits/Vegetables 19%
  - Livestock/Wool/Mohair 13%
  - All Other 28%
  - Cooperatives' total market share is 28% (down from 31% in 1996) with a business volume of \$79.4 billion

# The New Minnesota Cooperative Law

- Cooperatives' share of major U.S. farm supply expenditures (2001 USDA Data)
  - Fertilizer 45%
  - Petroleum 46%
  - Crop Protectants 34%
  - Feed 15%
  - Seed 13%
  - Total farm supply sales of \$24.8 billion in 2001; \$400 million less than record of \$25.2 billion in 1997

# The New Minnesota Cooperative Law

- Problems with cooperative creation and expansion
  - Very few new cooperatives have been registering under the longstanding Minnesota cooperative law (Chapter 308A)
  - Entities eligible to be cooperatives have instead been registering under the Minnesota Limited Liability Company Law

# New Filings in Wisconsin

<b>Year</b>	<b>Total Corporations</b>	<b>LLCs</b>	<b>LLPs</b>	<b>Cooperatives</b>
<b>1996</b>	<b>8,533</b>	<b>3,478</b>	<b>880</b>	<b>14</b>
<b>1997</b>	<b>7,952</b>	<b>5,567</b>	<b>962</b>	<b>12</b>
<b>1998</b>	<b>7,035</b>	<b>7,656</b>	<b>787</b>	<b>16</b>
<b>1999</b>	<b>6,767</b>	<b>9,785</b>	<b>596</b>	<b>8</b>
<b>2000</b>	<b>6,647</b>	<b>11,674</b>	<b>489</b>	<b>12</b>
<b>2001</b>	<b>5,828</b>	<b>13,953</b>	<b>424</b>	<b>22</b>
<b>2002</b>	<b>5,716</b>	<b>17,388</b>	<b>367</b>	<b>14</b>
<b>2003*</b>	<b>3,424</b>	<b>12,548</b>	<b>211</b>	<b>6</b>

\*First six months

Source: Bernice Smith, Wis. Dept. of Financial Institutions (608/264-7803)

PLEASE NOTE: No comparable Minnesota data is available from the Secretary of State



# The New Minnesota Cooperative Law

- Problems with cooperative formation and administration
  - Cooperatives have had difficulty obtaining the minimum 40% equity to obtain debt financing
  - Cooperatives have difficulty retiring member equity given inverse relationship between retiring members and new cooperative members
  - 8% limit of preferred stock made offerings difficult
  - Cooperatives forming joint ventures are incorporating as LLCs
    - A potential risk is that profitable ventures may be sold off, leaving less profitable activities within the member cooperative

# The New Minnesota Cooperative Law

- Series of meetings held around Minnesota with a broad cross-section of cooperative members in the summer of 2002
- Close attention was paid to new Wyoming Cooperative Law, a law that authorizes outside equity investment of processing cooperatives
- The cooperative consensus was that a new law was needed to ensure future of cooperatives in Minnesota

# The New Minnesota Cooperative Law

- Legislation was introduced in February 2003 and enacted into law by May of 2003 with strong support from cooperative members
- The law was written with assistance of Lindquist & Vennum and Dorsey & Whitney law firms

# The New Minnesota Cooperative Law

- Primary Provisions – Financial Rights
  - Two classes of stock: patron and investor; latter class may include patron members
  - Patron members have the financial right to no less than 60% of the cooperative's profits unless modified by the patron members at cooperative inception or by affirmative vote of the patron members; absolute minimum is 15% even if investor-members own more than 85% of the cooperative

# The New Minnesota Cooperative Law

## ■ Primary Provisions - Taxation

- Chapter 308B cooperative may be taxed as a partnership under IRS Subchapter K and receive pass-through treatment or elect to be taxed under IRS Subchapter T with a deduction from taxable income for patronage sourced income
- Existing cooperatives are unlikely to convert because the IRS would view this as a liquidation and sale of assets with a resulting high tax rate

# The New Minnesota Cooperative Law

- Primary Provisions – Cooperative Governance
  - A very flexible statute that is patron-member driven
  - Patron-members must hold *at least 50%* of the voting power on the Board of Directors and patron-members votes are counted as a block
  - Patron-members may increase their level of voting control
  - An Audit Committee must be created of board members

# The New Minnesota Cooperative Law

## ■ Issues to Consider

- Impact on Antitrust protection under Capper-Volstead (generally limited to agricultural production; one member one vote and no more than an 8% dividend)
- Vital focus on patron decision-making and a need for continuing education
- Federal and state securities exemptions may be impacted

# The New Minnesota Cooperative Law

- Similar legislation is being introduced in the Wisconsin Legislature this fall
- Iowa and other states are also considering new cooperative laws
- National Council of Farmer Cooperatives is calling for changes in federal laws affecting cooperatives
- For more information:
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