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.
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.
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- 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
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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
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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
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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

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

*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
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.
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- 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
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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.
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.
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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.
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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
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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
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- 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

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