

SUBJECT: Creating limited agricultural cooperatives that accept outside investments

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 9 ayes — Gonzalez Toureilles, Anderson, B. Brown, Crabb, Hardcastle, Heflin, Kleinschmidt, Rios Ybarra, Swinford

0 nays

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Steve Scurlock, IBAT - Independent Bankers Association of Texas)

BACKGROUND: Agriculture Code, ch. 52 establishes rules governing agricultural cooperatives in Texas. Agricultural cooperatives are governed by a board of directors and decisions are made through a democratic voting process. Agricultural cooperatives currently are entirely supported by members.

DIGEST: CSHB 1617 would amend the Agriculture Code by adding ch. 53 to establish limited agricultural cooperatives.

Outside Investment. CSHB 1617 would allow for the creation of agricultural marketing cooperatives structured to allow the acceptance of outside investments. A cooperative could solicit and issue nonpatron membership interests on terms determined by the board and disclosed in the certificate of formation, bylaws, or by separate disclosure to the members. If the bylaws did not otherwise provide for an allocation, profits and losses would be allocated to members and non-members based on the value of their respective contributions.

Product marketing. The bill would allow cooperatives and their members to enter into marketing contracts that required members to sell a specified portion of their products through the cooperative. A breach or threatened breach of contract would entitle the cooperative to seek an injunction to prevent the breach. Knowingly inducing a member of a

cooperative to breach a marketing contract would constitute a misdemeanor punishable by a maximum fine of \$1,000.

The bill would establish guidelines for filing instruments with the secretary of state. Submitting a false instrument would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Certificates of formation. Organizers of cooperatives would be required to file certificates of formation, which would include:

- name of the cooperative;
- address of cooperative's initial registered office and agent;
- purpose of the cooperative;
- principal place of business;
- period of duration, if not perpetual;
- capital structure;
- voting and governance rights;
- rules on transferring membership;
- contact information for the initial board of directors;
- information on allocation of profits and losses; and
- statement on net income allocation to members.

Cooperatives also could file amendments to certificates of formation and restated certificates of formation.

Bylaws and powers. Cooperatives would have to adopt bylaws to govern business affairs, structure, member rights and obligations, and the distribution of member interests. The bill would give cooperatives the powers assigned to for-profit corporations in Business Organization Code, ch. 2.

Fees. The bill would require agricultural cooperatives to pay the following certificate filing fees:

- \$300 for formation;
- \$150 for an amendment;
- \$300 for a restated certificate of formation;
- \$15 for a statement of change of registered agent;
- \$300 for a certificate of merger or conversion;
- \$40 for a termination;

- \$75 for reinstatement;
- \$15 for a correction; and
- \$15 for other instruments.

Registration. The bill would require cooperatives to keep a registered office and a registered agent. If a cooperative did not maintain a registered office or a registered agent, the secretary of state could terminate the cooperative after notice.

Members. Members who violated bylaws or other agreements could be required to give up financial rights or voting privileges. Members would be required to hold annual meetings. Members would elect a board of directors consisting of at least three people. The bill would establish guidelines on membership interests.

Mergers and conversions. The bill would set up guidelines to govern mergers between cooperatives and mergers between cooperatives and other businesses. The bill also would establish guidelines for existing cooperatives that would like to convert to the operating structure outlined in the bill.

Liquidation and termination. Cooperatives could be liquidated in the same manner as other business entities through the certificate of formation or through the same process as a limited liability company. Liquidation also could come about as the result of a vote on the advice of an accountant. Cooperatives would be required to pay off all debts, manage property, and file a certificate of termination with the secretary or state before they could be terminated.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 1617 would add a new chapter to the Agriculture Code, establishing an innovative structure for agricultural cooperatives. The cooperative structure set up by the bill would allow outside investors to contribute money to agricultural cooperatives. Small farmers and ranchers in rural areas often lack the resources to create agricultural cooperatives without outside assistance. CSHB 1617 would help farmers and ranchers obtain the capital necessary to establish and expand cooperatives by allowing non-farmers and non-ranchers to invest in agricultural cooperatives.

Agricultural cooperatives provide for the efficient processing and marketing of agricultural products. Cooperatives allow farmers to pool resources to support the collective interests of an industry. Ocean Spray, Sunkist, and Tree Top all are examples of agricultural cooperatives that started off small and grew into extremely successful businesses. CSHB 1617 would give more agricultural cooperatives the chance to market their products on a wider scale.

The bill would promote rural economic development by assisting farmers in adding value to their products. Outside investment is necessary for farmers to invest in technology that adds value to their products. Soybean farmers could feasibly use the cooperative structure in CSHB 1617 to invest in refineries that transformed soybeans to diesel fuel additives, increasing the value of their product.

Several other states, including Wyoming, Minnesota, Wisconsin, Iowa, and Tennessee, have enacted legislation similar to CSHB 1617 that created agricultural cooperatives that have the ability to take money from outside investors. CSHB 1617 is a piece of standardized legislation created by the National Conference of Commissioners on Uniform State Laws to be enacted in a uniform manner in all 50 states. The limited agricultural structure has been effective in other states and would benefit Texas as well.

OPPONENTS
SAY:

The cooperative structure proposed by the bill would make agricultural cooperatives subject to the franchise tax. Existing agricultural cooperatives would be unlikely to convert to the structure in the bill because it would increase their tax burden. Any advantages achieved by accepting outside investments would be negated by the heightened tax burden created by the bill.

NOTES:

During the 2007 regular session, a similar bill, HB 2671 by Swinford, passed the House on the Local, Consent, and Resolutions Calendar, but died in the Senate.