

SECOND REGULAR SESSION

# SENATE BILL NO. 775

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

Pre-filed December 22, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3994S.011

## AN ACT

To repeal sections 274.090, 274.110, and 348.432, RSMo, and to enact in lieu thereof three new sections relating to cooperative associations.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 274.090, 274.110, and 348.432, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 274.090,  
3 274.110, and 348.432, to read as follows:

274.090. 1. Each association incorporated under this chapter must, within  
2 thirty days after its incorporation, adopt for its government and management, a  
3 code of bylaws, not inconsistent with the powers granted by this chapter. A  
4 majority vote of the members voting thereon, or their written assent, is necessary  
5 to adopt such bylaws. Each association, under its bylaws, may provide for any  
6 or all of the following matters:

7 (1) The time, place and manner of calling and conducting its meetings;

8 (2) The number of members constituting a quorum;

9 (3) The right of members to vote by proxy or by mail or by both; and the  
10 conditions, manner, form, and effect of such votes; and may provide for the  
11 representation of the members by delegates at meetings, and if so, then the  
12 method of apportionment of representation, the manner of the election or  
13 appointment of such delegates, the right of such delegates to vote by proxy or by  
14 mail or by both, and the condition, manner, form and effect of such votes;

15 (4) The number of directors constituting a quorum;

16 (5) The qualifications, compensation, duties and term of office of directors  
17 and officers; the time of their election and the mode and manner of giving notice  
18 thereof;

19 (6) Penalties for violation of the bylaws; the mode, manner and vote

20 required for amending the bylaws;

21 (7) The amount of entrance, organization and membership fees, if any; the  
22 manner and method of collection of the same; and the purposes for which they  
23 may be used;

24 (8) The amount which each member shall be required to pay annually or  
25 from time to time, if at all, to carry on the business of the association;

26 (9) The charge, if any, to be paid by each member for services rendered  
27 by the association to him and the time of payment and the manner of collection;

28 (10) The marketing contract between the association and its members  
29 which every member may be required to sign;

30 (11) The number and qualifications of members of the association and the  
31 conditions precedent to membership;

32 (12) The method, time and manner of permitting members to withdraw;

33 (13) The manner of assignment of the interests of the members;

34 (14) The conditions upon which and time when membership of any  
35 member shall cease;

36 (15) The automatic suspension of the rights of a member when he ceases  
37 to be eligible to membership in the association;

38 (16) The mode, manner and effect of the expulsion of a member;

39 (17) The manner of determining the value of a member's interests and  
40 provision for its purchase by the association upon the death or withdrawal of a  
41 member, or upon the expulsion of a member or forfeiture of his membership;

42 **(18) The amount of and period of time and work accounted for**  
43 **in the remuneration provided to the officers and directors for service**  
44 **to the association's executive committee.**

45 2. In case of death, withdrawal or expulsion of a member, the board of  
46 directors shall, when authorized by its membership, equitably and conclusively  
47 appraise his property interests in the association and shall fix the amount thereof  
48 in money, which shall be paid to him, his legal representatives or assigns at such  
49 time as may be authorized by the board of directors, and in no event later than  
50 same would have been payable in the usual course of business, had such member  
51 continued his membership.

274.110. 1. The affairs of the association shall be managed by a board of  
2 not less than five directors, elected by the members from their own number.

3 2. The bylaws may provide that the territory in which the association has  
4 members shall be divided into districts and that the directors shall be elected

5 according to such districts, either directly or by district delegates elected by the  
6 members of that district. In such a case the bylaws shall specify the number of  
7 directors to be elected by each district, the manner and method of reapportioning  
8 the directors and of redistricting the territory covered by the association. The  
9 bylaws may provide that primary elections shall be held in each district to elect  
10 the directors apportioned to such districts and that the result of all such primary  
11 elections may be ratified by the next regular meeting of the association or may  
12 be considered final as to the association.

13 3. The bylaws may provide that one or more directors may be appointed  
14 by any public official or commission or by the other directors selected by the  
15 members or their delegates. Such directors shall represent primarily the interest  
16 of the general public in such associations. The directors so appointed need not  
17 be members of the association, but shall have the same powers and rights as  
18 other directors. Such directors shall not number more than one-fifth of the entire  
19 number of directors.

20 4. An association may provide a fair remuneration for the time actually  
21 spent by its officers and directors in its service and for the service of the members  
22 of its executive committee, **provided that the amount of such remuneration**  
23 **is voted on and agreed to by a majority of the association's members**  
24 **prior to payment.**

25 5. No director, during the term of his office, shall be a party to a contract  
26 for profit with the association differing in any way from the business relations  
27 accorded regular members of the association, or differing from terms generally  
28 current in that district. The bylaws may provide that no director shall occupy  
29 any position in the association, except the president and secretary on regular  
30 salary or substantially full-time pay.

31 6. The bylaws may provide for an executive committee and may allot to  
32 such committee all the functions and powers of the board of directors, subject to  
33 the general direction and control of the board.

34 7. When a vacancy on the board of directors occurs other than by  
35 expiration of term, the remaining members of the board, by a majority vote, shall  
36 fill the vacancy, unless the bylaws provide for the election of directors by district.  
37 In such a case the board of directors shall immediately call a special meeting of  
38 the members or stockholders in that district to fill the vacancy.

348.432. 1. The tax credit created in this section shall be known as the  
2 "New Generation Cooperative Incentive Tax Credit".

3           2. As used in this section, the following terms mean:

4           (1) "Authority", the agriculture and small business development authority  
5 as provided in this chapter;

6           (2) "Development facility", a facility producing either a good derived from  
7 an agricultural commodity or using a process to produce a good derived from an  
8 agricultural product;

9           (3) "Eligible new generation cooperative", a nonprofit cooperative  
10 association formed pursuant to chapter 274, RSMo, or incorporated pursuant to  
11 chapter 357, RSMo, for the purpose of operating a development facility or a  
12 renewable fuel production facility and approved by the authority;

13           (4) "Eligible new generation processing entity", a partnership, corporation,  
14 cooperative, or limited liability company organized or incorporated pursuant to  
15 the laws of this state consisting of not less than twelve members, approved by the  
16 authority, for the purpose of owning or operating within this state a development  
17 facility or a renewable fuel production facility in which producer members:

18           (a) Hold a majority of the governance or voting rights of the entity and  
19 any governing committee;

20           (b) Control the hiring and firing of management; and

21           (c) Deliver agricultural commodities or products to the entity for  
22 processing, unless processing is required by multiple entities;

23           (5) "Employee-qualified capital project", an eligible new generation  
24 cooperative with capital costs greater than fifteen million dollars which will  
25 employ at least sixty employees;

26           (6) "Large capital project", an eligible new generation cooperative with  
27 capital costs greater than one million dollars;

28           (7) "Producer member", a person, partnership, corporation, trust or limited  
29 liability company whose main purpose is agricultural production that invests cash  
30 funds to an eligible new generation cooperative or eligible new generation  
31 processing entity;

32           (8) "Renewable fuel production facility", a facility producing an energy  
33 source which is derived from a renewable, domestically grown, organic compound  
34 capable of powering machinery, including an engine or power plant, and any  
35 by-product derived from such energy source;

36           (9) "Small capital project", an eligible new generation cooperative with  
37 capital costs of no more than one million dollars.

38           3. Beginning tax year 1999, and ending December 31, 2002, any producer

39 member who invests cash funds in an eligible new generation cooperative or  
40 eligible new generation processing entity may receive a credit against the tax or  
41 estimated quarterly tax otherwise due pursuant to chapter 143, RSMo, other than  
42 taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148,  
43 RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of  
44 such producer member's investment or fifteen thousand dollars.

45 4. For all tax years beginning on or after January 1, 2003, any producer  
46 member who invests cash funds in an eligible new generation cooperative or  
47 eligible new generation processing entity may receive a credit against the tax or  
48 estimated quarterly tax otherwise due pursuant to chapter 143, RSMo, other than  
49 taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 147,  
50 RSMo, or chapter 148, RSMo, in an amount equal to the lesser of fifty percent of  
51 such producer member's investment or fifteen thousand dollars. Tax credits  
52 claimed in a taxable year may be done so on a quarterly basis and applied to the  
53 estimated quarterly tax pursuant to subsection 3 of this section. If a quarterly  
54 tax credit claim or series of claims contributes to causing an overpayment of taxes  
55 for a taxable year, such overpayment shall not be refunded but shall be applied  
56 to the next taxable year.

57 5. A producer member shall submit to the authority an application for the  
58 tax credit authorized by this section on a form provided by the authority. If the  
59 producer member meets all criteria prescribed by this section and is approved by  
60 the authority, the authority shall issue a tax credit certificate in the appropriate  
61 amount. Tax credits issued pursuant to this section may be carried back to any  
62 of the producer member's three prior taxable years and carried forward to any of  
63 the producer member's five subsequent taxable years regardless of the type of tax  
64 liability to which such credits are applied as authorized pursuant to subsection  
65 3 of this section. Tax credits issued pursuant to this section may be assigned,  
66 transferred, sold or otherwise conveyed and the new owner of the tax credit shall  
67 have the same rights in the credit as the producer member. Whenever a  
68 certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a  
69 notarized endorsement shall be filed with the authority specifying the name and  
70 address of the new owner of the tax credit or the value of the credit.

71 6. Ten percent of the tax credits authorized pursuant to this section  
72 initially shall be offered in any fiscal year to small capital projects. If any portion  
73 of the ten percent of tax credits offered to small capital costs projects is unused  
74 in any calendar year, then the unused portion of tax credits may be offered to

75 employee-qualified capital projects and large capital projects. If the authority  
76 receives more applications for tax credits for small capital projects than tax  
77 credits are authorized therefor, then the authority, by rule, shall determine the  
78 method of distribution of tax credits authorized for small capital projects.

79           7. Ninety percent of the tax credits authorized pursuant to this section  
80 initially shall be offered in any fiscal year to employee-qualified capital projects  
81 and large capital projects. If any portion of the ninety percent of tax credits  
82 offered to employee-qualified capital projects and large capital costs projects is  
83 unused in any fiscal year, then the unused portion of tax credits may be offered  
84 to small capital projects. The maximum tax credit allowed per employee-qualified  
85 capital project is three million dollars and the maximum tax credit allowed per  
86 large capital project is one million five hundred thousand dollars. If the  
87 authority approves the maximum tax credit allowed for any employee-qualified  
88 capital project or any large capital project, then the authority, by rule, shall  
89 determine the method of distribution of such maximum tax credit. In addition,  
90 if the authority receives more tax credit applications for employee-qualified  
91 capital projects and large capital projects than the amount of tax credits  
92 authorized therefor, then the authority, by rule, shall determine the method of  
93 distribution of tax credits authorized for employee-qualified capital projects and  
94 large capital projects.

95           **8. No new tax credits shall be approved, issued, or redeemed for**  
96 **any new generation cooperative not in compliance with all the**  
97 **provisions established in 7 U.S.C. Section 181 known as the Packers and**  
98 **Stockyards Act, 1921. Any new generation cooperative established after**  
99 **August 28, 2007, shall be in compliance with all of the provisions**  
100 **established in 7 U.S.C. Section 181 known as the Packers and**  
101 **Stockyards Act, 1921, before any tax credit is approved, issued, or**  
102 **redeemed by the state.**

103           **9. Producer members of any new generation processing entity**  
104 **claiming the exemption established in 9 C.F.R. 201-200 shall not be**  
105 **eligible for tax credits as they are established in this section.**

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