



Senate

General Assembly

File No. 854

January Session, 2019

Substitute Senate Bill No. 138

Senate, April 30, 2019

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT MODERNIZING THE STATE'S COOPERATIVE ASSOCIATION STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 33-183 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 [Seven] Three or more persons of lawful age [] and inhabitants of
4 this state, may, by written articles of [agreement] association, associate
5 themselves together for the purposes of trade or for carrying on any
6 lawful mercantile, mechanical, manufacturing or agricultural business
7 within this state, and, when such articles of association have been
8 executed and filed in the office of the Secretary of the State, the
9 franchise tax provided by section 33-187, as amended by this act, paid
10 to, and such articles of association approved by, said secretary, such
11 persons shall become a corporation and enjoy all the powers and
12 privileges and be subject to all the duties, restrictions and liabilities of
13 other corporations, except so far as [the same] such duties, restrictions
14 and liabilities may be limited or enlarged by this chapter.

15 Sec. 2. Section 33-184 of the general statutes is repealed and the
16 following is substituted in lieu thereof (*Effective October 1, 2019*):

17 The objects for which such association is established, and the place
18 within which its business is to be carried on, shall be distinctly set forth
19 in its articles of [agreement] association, and it shall not do business in
20 any other place or places than those mentioned in its articles.

21 Sec. 3. Section 33-185 of the general statutes is repealed and the
22 following is substituted in lieu thereof (*Effective from passage*):

23 [The] (a) Prior to October 1, 2019, the business of the association
24 shall be managed by not fewer than seven members, who shall be
25 styled a board of managers, shall be chosen annually by the
26 stockholders and shall hold their offices until others are chosen and
27 have qualified in their stead, except that when the bylaws of such
28 association so prescribe, the board of managers may be divided into
29 not more than three classes, each class to hold office for not more than
30 three years, one of which classes shall be elected annually. Such
31 association shall have such other officers appointed as its bylaws
32 prescribe. The terms of the members of the board serving on the
33 effective date of this section shall expire on September 30, 2019.

34 (b) On and after October 1, 2019, the business of the association shall
35 be managed by a board of directors consisting of not fewer than three
36 members of the association. The board of directors shall be elected
37 annually by the member shareholders and shall hold office until a
38 successor has been elected, except, when the bylaws of such
39 association so prescribe, the board of directors may be divided into not
40 more than three classes, one of which classes shall be elected annually,
41 with each class to hold office for not more than six years. Such
42 association may adopt bylaws concerning the appointment of other
43 officers of the association and to implement the provisions of this
44 section.

45 Sec. 4. Section 33-187 of the general statutes is repealed and the
46 following is substituted in lieu thereof (*Effective October 1, 2019*):

47 The amount of capital stock of any cooperative association
48 organized under the provisions of this chapter shall be fixed by its
49 articles of association at a sum not exceeding [five] fifty million dollars
50 par value, and shall be subject to the same franchise tax as the capital
51 stock of other corporations organized under the general [law] laws,
52 which tax shall be paid to the Secretary of the State. The association
53 may increase or diminish the amount and number of shares of such
54 stock at any meeting of the [stockholders] member shareholders
55 specially called for such purpose, but no shares shall be issued at less
56 than their par value. [Within] Not later than five days after the passage
57 of any vote increasing or diminishing such stock, such association shall
58 cause a certificate setting forth such vote, signed by a majority of the
59 board of [managers] directors, to be recorded in the office of the
60 Secretary of the State.

61 Sec. 5. Section 33-188 of the general statutes is repealed and the
62 following is substituted in lieu thereof (*Effective October 1, 2019*):

63 Not later than thirty days after the first meeting of the association,
64 the board of [managers] directors shall prepare a report, setting forth
65 the name of the association, the principal office of the association, the
66 names of the respective business and residence addresses of the board
67 of [managers] directors and officers of the association, the amount of
68 capital stock, the par value of the shares, and the number of shares
69 issued, together with a statement that such shares are fully paid or, if
70 not fully paid, a statement of the amount payable in respect thereof,
71 which report shall be filed and recorded in the office of the Secretary of
72 the State. On or before the tenth day of March [in each year] annually
73 thereafter, the board of [managers] directors shall prepare a [like]
74 report of the [same] facts as they existed on the first day of [such]
75 March and [the same] such report shall be filed and recorded in the
76 office of the Secretary of the State. [All the statements] Any statement
77 provided for in this section shall be signed and sworn to by a majority
78 of the board of [managers] directors.

79 Sec. 6. Section 33-191 of the general statutes is repealed and the

80 following is substituted in lieu thereof (*Effective October 1, 2019*):

81 No certificate of shares shall be issued to any person until the full
82 amount thereof has been paid in cash, and no shareholder shall receive
83 less than the par value of any share when disposing of the same to the
84 board of [managers] directors. No person shall be allowed to become a
85 shareholder in such association except by the consent of the
86 [managers] directors.

87 Sec. 7. Section 33-192 of the general statutes is repealed and the
88 following is substituted in lieu thereof (*Effective October 1, 2019*):

89 [If the board of managers fails to make any return required by this
90 chapter or makes an untrue return, the members thereof shall be
91 jointly and severally liable for all debts existing at the date of such
92 return or at the time when the return should have been made, and
93 such association shall forfeit to the state fifty dollars for each failure.] If
94 the association fails to file the annual report required by section 33-188,
95 as amended by this act, or makes an untrue report, the association
96 shall pay to the Secretary of the State fifty dollars for each such failure.

97 Sec. 8. Section 33-193 of the general statutes is repealed and the
98 following is substituted in lieu thereof (*Effective October 1, 2019*):

99 There shall be [such] a distribution of the profits or [earnings]
100 surplus of [such] an association among the member shareholders as is
101 prescribed by the association's bylaws. [; provided no distribution shall
102 be declared or paid until a sum equal to ten per cent of the net profits
103 is appropriated for a contingent or sinking fund and until there has
104 been thereby accumulated a sum equal to twenty per cent of the capital
105 stock.] The board of directors of an association may declare a sum of
106 not more than forty per cent of the net profits or surplus to be
107 appropriated for a contingent or sinking fund, an unallocated reserve
108 fund or a collective account as may be prescribed in the association's
109 bylaws.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	33-183
Sec. 2	<i>October 1, 2019</i>	33-184
Sec. 3	<i>from passage</i>	33-185
Sec. 4	<i>October 1, 2019</i>	33-187
Sec. 5	<i>October 1, 2019</i>	33-188
Sec. 6	<i>October 1, 2019</i>	33-191
Sec. 7	<i>October 1, 2019</i>	33-192
Sec. 8	<i>October 1, 2019</i>	33-193

Statement of Legislative Commissioners:

In Section 3(a), "Prior to September 30, 2019" was changed to "Prior to October 1, 2019" for consistency with other provisions of the bill.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Secretary of the State	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes various changes to the laws governing cooperative associations (“co-ops”).

The bill reduces from seven to three the minimum number of individuals needed to organize a co-op. Under current law, co-ops must pay a franchise tax and get approval of their articles of association from the Secretary of the State (SOS) to become a co-op. To the extent new co-ops are established as a result of this provision, there may be a potential minimal revenue gain.

The bill also increases from \$5 million to \$50 million par value, the maximum amount of capital stock a co-op may decide on in its articles of association. Under current law, such capital stock is subject to the same franchise tax as the capital stock of other corporations organized under the general laws, which tax shall be paid to SOS. To the extent a co-op increases the maximum amount of capital stock it may decide on in its articles of association, there may be a potential minimal revenue gain.

The bill eliminates current law that makes co-op members jointly and severally liable for all debts existing if the board fails to file an

annual report with SOS or files a false report. Instead, the bill requires co-ops to annually file a report to SOS which includes, but is not limited to, the amount of capital stock and number of shares issued for the prior year. As under current law, kept by the bill, the co-op must pay \$50 for each such failure. No fiscal impact is anticipated as a result of this provision as it is making clarifying changes to statute.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of new co-ops and the increase in co-op capital stock.

OLR Bill Analysis**sSB 138****AN ACT MODERNIZING THE STATE'S COOPERATIVE ASSOCIATION STATUTES.****SUMMARY**

This bill makes various changes to the laws governing cooperative associations (“co-ops”). Principally, it:

1. reduces, from seven to three, the minimum number of individuals needed to organize a co-op (§ 1);
2. increases, from \$5 million to \$50 million par value, the maximum amount of capital stock a co-op may fix by its articles of association (§ 4);
3. starting October 1, 2019, the bill reduces the minimum number of co-op board members and increases their maximum term limits (§§ 3, 5 & 6);
4. eliminates a provision in current law that makes co-op members jointly and severally liable for all debts existing if the board fails to file an annual report with the secretary of the state (SOTS) or files a false report (§ 7);
5. allows more discretion for distributing profits to shareholders (§ 8); and
6. makes minor, technical, and conforming changes (§ 2 and throughout).

EFFECTIVE DATE: October 1, 2019, except the provision regarding board membership is effective upon passage.

§ 1 — CO-OP ORGANIZATION

The bill reduces from seven to three, the minimum number of adult Connecticut residents needed to organize a co-op for trade or carrying on a lawful mercantile, mechanical, manufacturing, or agricultural business in Connecticut. As under existing law, they must also pay a franchise tax and get approval of their articles of association from SOTS in order to become a co-op and, in doing so, enjoy all the powers and privileges, and be subject to all the duties, restrictions, and liabilities, of a corporation.

§§ 3, 5 & 6 — CO-OP BOARDS

Starting October 1, 2019, the bill reduces the minimum number of members on a co-op's board from at least seven managers who are members to at least three directors who are members.

Under the bill, the terms of any board members who are serving on the bill's effective date expire on September 30, 2019. As is the case for managers under current law, the directors must be elected annually by the member shareholders and hold office until a successor is elected. The board may be divided into up to three classes when the bylaws prescribe, one of which is elected annually. The bill extends the maximum term for each class from three to six years.

The bill also eliminates a requirement that the co-op have the other officers appointed as its bylaws prescribe, and instead allows the co-op to adopt bylaws (1) concerning the appointment of other officers and (2) to implement these provisions.

§ 7 — REPORTING REQUIREMENT

By law, co-op boards must annually report to SOTS various information, including the amount of capital stock and the number of shares issued for the prior year (CGS § 33-188). The bill repeals a law that makes members jointly and severally liable for all debts existing if the board fails to make the report or files a false report. As under current law, in such circumstances, the co-op must pay SOTS \$50 for each such failure.

§ 8 — SHAREHOLDER PROFITS

The bill allows more discretion regarding when profits may be distributed to shareholders. Currently, profits or earnings may not be distributed to shareholders until 10% of the net profits are appropriated for a contingent or sinking fund and a sum equal to 20% of the capital stock has accumulated in the fund. Under the bill, the by-laws may:

1. prescribe when co-op's profits or surplus may distributed to its shareholders and
2. allow the co-op's board to declare up to 40% of the net profits or surplus be appropriated for a contingent or sinking fund, an unallocated reserve fund, or a collective account.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (04/12/2019)