

ASSEMBLY BILL

No. 1161

Introduced by Assembly Member Skinner

February 18, 2011

An act to amend Sections 1113, 12200, 12201, 12243, 12253, 12310, 12330, 12404, 12446, and 12461 of, and to amend the heading of Part 2 (commencing with Section 12200) of Division 3 of, the Corporations Code, relating to cooperative corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, as introduced, Skinner. Cooperative corporations.

Existing law, the Consumer Cooperative Corporation Law, provides for the organization and operation of primarily consumer cooperatives, and is also applicable to other cooperatives. Existing law provides for, among other things, information to be included in a corporation's bylaws, definitions necessary for purposes of defining patrons, and requirements as to voting rights of members and time periods for sending notice of meetings at which members are entitled to vote.

This bill would rename the law as the Cooperative Corporation Law, and provide alternative provisions to which a cooperative corporation may elect to be subject by designating itself as a worker cooperative in its bylaws. This bill would limit a member of a worker cooperative to only one vote on a matter to be voted on by all classes voting together as a single class, regardless of the number of voting classes in which the person is a member. The bill would also require notice of a meeting in which members of a worker cooperative are entitled to vote to be sent no more than 24 hours before the time of the meeting. The bill would also make conforming changes.

Violation of specified provisions of the existing law is a crime.

Because this bill would expand existing crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1113 of the Corporations Code is
2 amended to read:

3 1113. (a) Any one or more corporations may merge with one
4 or more other business entities (Section 174.5). One or more
5 domestic corporations (Section 167) not organized under this
6 division and one or more foreign corporations (Section 171) may
7 be parties to the merger. Notwithstanding the provisions of this
8 section, the merger of any number of corporations with any number
9 of other business entities may be effected only if:

10 (1) In a merger in which a domestic corporation not organized
11 under this division or a domestic other business entity is a party,
12 it is authorized by the laws under which it is organized to effect
13 the merger.

14 (2) In a merger in which a foreign corporation is a party, it is
15 authorized by the laws under which it is organized to effect the
16 merger.

17 (3) In a merger in which a foreign other business entity is a
18 party, it is authorized by the laws under which it is organized to
19 effect the merger.

20 (b) Each corporation and each other party which desires to merge
21 shall approve, and shall be a party to, an agreement of merger.
22 Other persons, including a parent party (Section 1200), may be
23 parties to the agreement of merger. The board of each corporation
24 which desires to merge, and, if required the shareholders, shall
25 approve the agreement of merger. The agreement of merger shall
26 be approved on behalf of each party by those persons required to
27 approve the merger by the laws under which it is organized. The
28 agreement of merger shall state:

1 (1) The terms and conditions of the merger.

2 (2) The name and place of incorporation or organization of each
3 party to the merger and the identity of the surviving party.

4 (3) The amendments, if any, subject to Sections 900 and 907,
5 to the articles of the surviving corporation, if applicable, to be
6 effected by the merger. If any amendment changes the name of
7 the surviving corporation, if applicable, the new name may be,
8 subject to subdivision (b) of Section 201, the same as or similar
9 to the name of a disappearing party to the merger.

10 (4) The manner of converting the shares of each constituent
11 corporation into shares, interests, or other securities of the surviving
12 party. If any shares of any constituent corporation are not to be
13 converted solely into shares, interests or other securities of the
14 surviving party, the agreement of merger shall state (i) the cash,
15 rights, securities, or other property which the holders of those
16 shares are to receive in exchange for the shares, which cash, rights,
17 securities, or other property may be in addition to or in lieu of
18 shares, interests or other securities of the surviving party, or (ii)
19 that the shares are canceled without consideration.

20 (5) Any other details or provisions required by the laws under
21 which any party to the merger is organized, including, if a public
22 benefit corporation or a religious corporation is a party to the
23 merger, Section 6019.1, or, if a mutual benefit corporation is a
24 party to the merger, Section 8019.1, or, if a ~~consumer~~ cooperative
25 corporation is a party to the merger, Section 12540.1, or, if a
26 domestic limited partnership is a party to the merger, Section
27 15678.2 or 15911.12, or, if a domestic partnership is a party to the
28 merger, Section 16911, or, if a domestic limited liability company
29 is a party to the merger, Section 17551.

30 (6) Any other details or provisions as are desired, including,
31 without limitation, a provision for the payment of cash in lieu of
32 fractional shares or for any other arrangement with respect thereto
33 consistent with the provisions of Section 407.

34 (c) Each share of the same class or series of any constituent
35 corporation (other than the cancellation of shares held by a party
36 to the merger or its parent, or a wholly owned subsidiary of either,
37 in another constituent corporation) shall, unless all shareholders
38 of the class or series consent and except as provided in Section
39 407, be treated equally with respect to any distribution of cash,
40 rights, securities, or other property. Notwithstanding paragraph

1 (4) of subdivision (b), the unredeemable common shares of a
2 constituent corporation may be converted only into unredeemable
3 common shares of a surviving corporation or a parent party
4 (Section 1200) or unredeemable equity securities of a surviving
5 party other than a corporation if another party to the merger or its
6 parent owns, directly or indirectly, prior to the merger shares of
7 that corporation representing more than 50 percent of the voting
8 power of that corporation, unless all of the shareholders of the
9 class consent and except as provided in Section 407.

10 (d) Notwithstanding its prior approval, an agreement of merger
11 may be amended prior to the filing of the agreement of merger or
12 the certificate of merger, as is applicable, if the amendment is
13 approved by the board of each constituent corporation and, if the
14 amendment changes any of the principal terms of the agreement,
15 by the outstanding shares (Section 152), if required by Chapter 12
16 (commencing with Section 1200), in the same manner as the
17 original agreement of merger. If the agreement of merger as so
18 amended and approved is also approved by each of the other parties
19 to the agreement of merger, the agreement of merger as so amended
20 shall then constitute the agreement of merger.

21 (e) The board of a constituent corporation may, in its discretion,
22 abandon a merger, subject to the contractual rights, if any, of third
23 parties, including other parties to the agreement of merger, without
24 further approval by the outstanding shares (Section 152), at any
25 time before the merger is effective.

26 (f) Each constituent corporation shall sign the agreement of
27 merger by its chairperson of the board, president or a vice president
28 and also by its secretary or an assistant secretary acting on behalf
29 of their respective corporations.

30 (g) (1) If the surviving party is a corporation or a foreign
31 corporation, or if a public benefit corporation (Section 5060), a
32 mutual benefit corporation (Section 5059), a religious corporation
33 (Section 5061), or a corporation organized under the ~~Consumer~~
34 Cooperative Corporation Law (Section 12200) is a party to the
35 merger, after required approvals of the merger by each constituent
36 corporation through approval of the board (Section 151) and any
37 approval of the outstanding shares (Section 152) required by
38 Chapter 12 (commencing with Section 1200) and by the other
39 parties to the merger, the surviving party shall file a copy of the
40 agreement of merger with an officers' certificate of each constituent

1 domestic and foreign corporation attached stating the total number
2 of outstanding shares or membership interests of each class entitled
3 to vote on the merger (and identifying any other person or persons
4 whose approval is required), that the agreement of merger in the
5 form attached or its principal terms, as required, were approved
6 by that corporation by a vote of a number of shares or membership
7 interests of each class that equaled or exceeded the vote required,
8 specifying each class entitled to vote and the percentage vote
9 required of each class and, if applicable, by that other person or
10 persons whose approval is required, or that the merger agreement
11 was entitled to be and was approved by the board alone (as
12 provided in Section 1201, in the case of corporations subject to
13 that section). If equity securities of a parent party (Section 1200)
14 are to be issued in the merger, the officers' certificate of that
15 controlled party shall state either that no vote of the shareholders
16 of the parent party was required or that the required vote was
17 obtained. In lieu of an officers' certificate, a certificate of merger,
18 on a form prescribed by the Secretary of State, shall be filed for
19 each constituent other business entity. The certificate of merger
20 shall be executed and acknowledged by each domestic constituent
21 limited liability company by all managers of the limited liability
22 company (unless a lesser number is specified in its articles of
23 organization or operating agreement) and by each domestic
24 constituent limited partnership by all general partners (unless a
25 lesser number is provided in its certificate of limited partnership
26 or partnership agreement) and by each domestic constituent general
27 partnership by two partners (unless a lesser number is provided in
28 its partnership agreement) and by each foreign constituent limited
29 liability company by one or more managers and by each foreign
30 constituent general partnership or foreign constituent limited
31 partnership by one or more general partners, and by each
32 constituent reciprocal insurer by the chairperson of the board,
33 president, or vice president, and by the secretary or assistant
34 secretary, or, if a constituent reciprocal insurer has not appointed
35 those officers, by the chairperson of the board, president, or vice
36 president, and by the secretary or assistant secretary of the
37 constituent reciprocal insurer's attorney-in-fact, and by each other
38 party to the merger by those persons required or authorized to
39 execute the certificate of merger by the laws under which that party
40 is organized, specifying for that party the provision of law or other

1 basis for the authority of the signing persons. The certificate of
2 merger shall set forth, if a vote of the shareholders, members,
3 partners, or other holders of interests of the constituent other
4 business entity was required, a statement setting forth the total
5 number of outstanding interests of each class entitled to vote on
6 the merger and that the agreement of merger in the form attached
7 or its principal terms, as required, were approved by a vote of the
8 number of interests of each class that equaled or exceeded the vote
9 required, specifying each class entitled to vote and the percentage
10 vote required of each class, and any other information required to
11 be set forth under the laws under which the constituent other
12 business entity is organized, including, if a domestic limited
13 partnership is a party to the merger, subdivision (a) of Section
14 15678.4 or subdivision (a) of Section 15911.14, if a domestic
15 partnership is a party to the merger, subdivision (b) of Section
16 16915, and, if a domestic limited liability company is a party to
17 the merger, subdivision (a) of Section 17552. The certificate of
18 merger for each constituent foreign other business entity, if any,
19 shall also set forth the statutory or other basis under which that
20 foreign other business entity is authorized by the laws under which
21 it is organized to effect the merger. The merger and any amendment
22 of the articles of the surviving corporation, if applicable, contained
23 in the agreement of merger shall be effective upon filing of the
24 agreement of merger with an officer's certificate of each constituent
25 domestic and foreign corporation and a certificate of merger for
26 each constituent other business entity, subject to subdivision (c)
27 of Section 110 and subject to the provisions of subdivision (j), and
28 the several parties thereto shall be one entity. If a domestic
29 reciprocal insurer organized after 1974 to provide medical
30 malpractice insurance is a party to the merger, the agreement of
31 merger or certificate of merger shall not be filed until there has
32 been filed the certificate issued by the Insurance Commissioner
33 approving the merger pursuant to Section 1555 of the Insurance
34 Code. The Secretary of State may certify a copy of the agreement
35 of merger separate from the officers' certificates and certificates
36 of merger attached thereto.

37 (2) If the surviving entity is an other business entity, and no
38 public benefit corporation (Section 5060), mutual benefit
39 corporation (Section 5059), religious corporation (Section 5061),
40 or corporation organized under the ~~Consumer~~ Cooperative

1 Corporation Law (Section 12200) is a party to the merger, after
2 required approvals of the merger by each constituent corporation
3 through approval of the board (Section 151) and any approval of
4 the outstanding shares (Section 152) required by Chapter 12
5 (commencing with Section 1200) and by the other parties to the
6 merger, the parties to the merger shall file a certificate of merger
7 in the office of, and on a form prescribed by, the Secretary of State.
8 The certificate of merger shall be executed and acknowledged by
9 each constituent domestic and foreign corporation by its
10 chairperson of the board, president or a vice president and also by
11 its secretary or an assistant secretary and by each domestic
12 constituent limited liability company by all managers of the limited
13 liability company (unless a lesser number is specified in its articles
14 of organization or operating agreement) and by each domestic
15 constituent limited partnership by all general partners (unless a
16 lesser number is provided in its certificate of limited partnership
17 or partnership agreement) and by each domestic constituent general
18 partnership by two partners (unless a lesser number is provided in
19 its partnership agreement) and by each foreign constituent limited
20 liability company by one or more managers and by each foreign
21 constituent general partnership or foreign constituent limited
22 partnership by one or more general partners, and by each
23 constituent reciprocal insurer by the chairperson of the board,
24 president, or vice president, and by the secretary or assistant
25 secretary, or, if a constituent reciprocal insurer has not appointed
26 those officers, by the chairperson of the board, president, or vice
27 president, and by the secretary or assistant secretary of the
28 constituent reciprocal insurer's attorney-in-fact. The certificate of
29 merger shall be signed by each other party to the merger by those
30 persons required or authorized to execute the certificate of merger
31 by the laws under which that party is organized, specifying for
32 that party the provision of law or other basis for the authority of
33 the signing persons. The certificate of merger shall set forth all of
34 the following:

35 (A) The name, place of incorporation or organization, and the
36 Secretary of State's file number, if any, of each party to the merger,
37 separately identifying the disappearing parties and the surviving
38 party.

39 (B) If the approval of the outstanding shares of a constituent
40 corporation was required by Chapter 12 (commencing with Section

1 1200), a statement setting forth the total number of outstanding
2 shares of each class entitled to vote on the merger and that the
3 principal terms of the agreement of merger were approved by a
4 vote of the number of shares of each class entitled to vote and the
5 percentage vote required of each class.

6 (C) The future effective date or time, not more than 90 days
7 subsequent to the date of filing of the merger, if the merger is not
8 to be effective upon the filing of the certificate of merger with the
9 office of the Secretary of State.

10 (D) A statement, by each party to the merger which is a domestic
11 corporation not organized under this division, a foreign corporation,
12 or an other business entity, of the statutory or other basis under
13 which that party is authorized by the laws under which it is
14 organized to effect the merger.

15 (E) Any other information required to be stated in the certificate
16 of merger by the laws under which each party to the merger is
17 organized, including, if a domestic limited liability company is a
18 party to the merger, subdivision (a) of Section 17552, if a domestic
19 partnership is a party to the merger, subdivision (b) of Section
20 16915, and, if a domestic limited partnership is a party to the
21 merger, subdivision (a) of Section 15678.4 or subdivision (a) of
22 Section 15911.14.

23 (F) Any other details or provisions that may be desired.

24 Unless a future effective date or time is provided in a certificate
25 of merger, in which event the merger shall be effective at that
26 future effective date or time, a merger shall be effective upon the
27 filing of the certificate of merger in the office of the Secretary of
28 State and the several parties thereto shall be one entity. The
29 surviving other business entity shall keep a copy of the agreement
30 of merger at its principal place of business which, for purposes of
31 this subdivision, shall be the office referred to in Section 17057 if
32 a domestic limited liability company, at the business address
33 specified in paragraph (5) of subdivision (a) of Section 17552 if
34 a foreign limited liability company, at the office referred to in
35 subdivision (a) of Section 16403 if a domestic general partnership,
36 at the business address specified in subdivision (f) of Section 16911
37 if a foreign partnership, at the office referred to in subdivision (a)
38 of Section 15614 or in subdivision (a) of Section 15901.14 if a
39 domestic limited partnership, or at the business address specified
40 in paragraph (5) of subdivision (a) of Section 15678.4 or paragraph

1 (3) of subdivision (a) of Section 15909.02 if a foreign limited
2 partnership. Upon the request of a holder of equity securities of a
3 party to the merger, a person with authority to do so on behalf of
4 the surviving other business entity shall promptly deliver to that
5 holder, a copy of the agreement of merger. A waiver by that holder
6 of the rights provided in the foregoing sentence shall be
7 unenforceable. If a domestic reciprocal insurer organized after
8 1974 to provide medical malpractice insurance is a party to the
9 merger the agreement of merger or certificate of merger shall not
10 be filed until there has been filed the certificate issued by the
11 Insurance Commissioner approving the merger in accordance with
12 Section 1555 of the Insurance Code.

13 (h) (1) A copy of an agreement of merger certified on or after
14 the effective date by an official having custody thereof has the
15 same force in evidence as the original and, except as against the
16 state, is conclusive evidence of the performance of all conditions
17 precedent to the merger, the existence on the effective date of the
18 surviving party to the merger and the performance of the conditions
19 necessary to the adoption of any amendment to the articles, if
20 applicable, contained in the agreement of merger.

21 (2) For all purposes for a merger in which the surviving entity
22 is a domestic other business entity and the filing of a certificate of
23 merger is required by paragraph (2) of subdivision (g), a copy of
24 the certificate of merger duly certified by the Secretary of State is
25 conclusive evidence of the merger of the constituent corporations,
26 either by themselves or together with the other parties to the
27 merger, into the surviving other business entity.

28 (i) (1) Upon a merger pursuant to this section, the separate
29 existences of the disappearing parties to the merger cease and the
30 surviving party to the merger shall succeed, without other transfer,
31 to all the rights and property of each of the disappearing parties to
32 the merger and shall be subject to all the debts and liabilities of
33 each in the same manner as if the surviving party to the merger
34 had itself incurred them.

35 (2) All rights of creditors and all liens upon the property of each
36 of the constituent corporations and other parties to the merger shall
37 be preserved unimpaired, provided that those liens upon property
38 of a disappearing party shall be limited to the property affected
39 thereby immediately prior to the time the merger is effective.

1 (3) Any action or proceeding pending by or against any
2 disappearing corporation or disappearing party to the merger may
3 be prosecuted to judgment, which shall bind the surviving party,
4 or the surviving party may be proceeded against or substituted in
5 its place.

6 (4) If a limited partnership or a general partnership is a party to
7 the merger, nothing in this section is intended to affect the liability
8 a general partner of a disappearing limited partnership or general
9 partnership may have in connection with the debts and liabilities
10 of the disappearing limited partnership or general partnership
11 existing prior to the time the merger is effective.

12 (j) (1) The merger of domestic corporations with foreign
13 corporations or foreign other business entities in a merger in which
14 one or more other business entities is a party shall comply with
15 subdivision (a) and this subdivision.

16 (2) If the surviving party is a domestic corporation or domestic
17 other business entity, the merger proceedings with respect to that
18 party and any domestic disappearing corporation shall conform to
19 the provisions of this section. If the surviving party is a foreign
20 corporation or foreign other business entity, then, subject to the
21 requirements of subdivision (c), and of Section 407 and Chapter
22 12 (commencing with Section 1200) and Chapter 13 (commencing
23 with Section 1300), and, if applicable, corresponding provisions
24 of the Nonprofit Corporation Law or the ~~Consumer~~ Cooperative
25 Corporation Law, with respect to any domestic constituent
26 corporations, Chapter 13 (commencing with Section 17600) of
27 Title 2.5 with respect to any domestic constituent limited liability
28 companies, Article 6 (commencing with Section 16601) of Chapter
29 5 of Title 2 with respect to any domestic constituent general
30 partnerships, and Article 7.6 (commencing with Section 15679.1)
31 of Chapter 3, and Article 11.5 (commencing with Section
32 15911.20) of Chapter 5.5 of Title 2 with respect to any domestic
33 constituent limited partnerships, the merger proceedings may be
34 in accordance with the laws of the state or place of incorporation
35 or organization of the surviving party.

36 (3) If the surviving party is a domestic corporation or domestic
37 other business entity, the certificate of merger or the agreement of
38 merger with attachments shall be filed as provided in subdivision
39 (g) and thereupon, subject to subdivision (c) of Section 110 or
40 paragraph (2) of subdivision (g), as is applicable, the merger shall

1 be effective as to each domestic constituent corporation and
2 domestic constituent other business entity.

3 (4) If the surviving party is a foreign corporation or foreign
4 other business entity, the merger shall become effective in
5 accordance with the law of the jurisdiction in which the surviving
6 party is organized, but, except as provided in paragraph (5), the
7 merger shall be effective as to any domestic disappearing
8 corporation as of the time of effectiveness in the foreign jurisdiction
9 upon the filing in this state of a copy of the agreement of merger
10 with an officers' certificate of each constituent foreign and
11 domestic corporation and a certificate of merger of each constituent
12 other business entity attached, which officers' certificates and
13 certificates of merger shall conform to the requirements of
14 paragraph (1) of subdivision (g). If one or more domestic other
15 business entities is a disappearing party in a merger pursuant to
16 this subdivision in which a foreign other business entity is the
17 surviving entity, a certificate of merger required by the laws under
18 which that domestic other business entity is organized, including
19 subdivision (a) of Section 15678.4, subdivision (a) of Section
20 15911.14, subdivision (b) of Section 16915, or subdivision (a) of
21 Section 17552, as is applicable, shall also be filed at the same time
22 as the filing of the agreement of merger.

23 (5) If the date of the filing in this state pursuant to this
24 subdivision is more than six months after the time of the
25 effectiveness in the foreign jurisdiction, or if the powers of a
26 domestic disappearing corporation are suspended at the time of
27 effectiveness in the foreign jurisdiction, the merger shall be
28 effective as to the domestic disappearing corporation as of the date
29 of filing in this state.

30 (6) In a merger described in paragraph (3) or (4), each foreign
31 disappearing corporation that is qualified for the transaction of
32 intrastate business shall by virtue of the filing pursuant to this
33 subdivision, subject to subdivision (c) of Section 110, automatically
34 surrender its right to transact intrastate business in this state. The
35 filing of the agreement of merger or certificate of merger, as is
36 applicable, pursuant to this subdivision, by a disappearing foreign
37 other business entity registered for the transaction of intrastate
38 business in this state shall, by virtue of that filing, subject to
39 subdivision (c) of Section 110, automatically cancels the

1 registration for that foreign other business entity, without the
2 necessity of the filing of a certificate of cancellation.

3 SEC. 2. Section 12200 of the Corporations Code is amended
4 to read:

5 12200. This part shall be known as the ~~Consumer~~ Cooperative
6 Corporation Law. This part is intended primarily to apply to the
7 organization and operation of consumer cooperatives *and worker*
8 *cooperatives*. It is also applicable to other cooperatives, including,
9 but not limited to, cooperatives formed for the purpose of recycling
10 or treating hazardous wastes, which elect to incorporate under it.

11 SEC. 3. Section 12201 of the Corporations Code is amended
12 to read:

13 12201. (a) Subject to any other provision of law of this state
14 applying to the particular class of corporation or line of activity,
15 a corporation may be formed under this part for any lawful purpose
16 provided that it shall be organized and shall conduct its business
17 primarily for the mutual benefit of its members as patrons of the
18 corporation. The earnings, savings, or benefits of the corporation
19 shall be used for the general welfare of the members or shall be
20 proportionately and equitably distributed to some or all of its
21 members or its patrons, based upon their patronage (Section 12243)
22 of the corporation, in the form of cash, property, evidences of
23 indebtedness, capital credits, memberships, or services.

24 ~~Such~~

25 (b) *Those* corporations *that* are democratically controlled and
26 are not organized to make a profit for themselves, as such, or for
27 their members, as such, but primarily for their members as patrons
28 (Section 12243).

29 (c) *A corporation organized under this part that has designated*
30 *in its bylaws that it is a worker cooperative shall also designate*
31 *that its workers constitute its members or one class of its members.*

32 SEC. 4. Section 12243 of the Corporations Code is amended
33 to read:

34 12243. (a) If the corporation is organized to provide goods or
35 services to its members, the corporation's "patrons" are those who
36 purchase those types of goods from, or use those types of service
37 of, the corporation. If the corporation is organized to market,
38 process or otherwise handle its members' products or services, the
39 corporation's "patrons" are those persons whose products or
40 services are so marketed, processed, or handled by the corporation.

1 (b) *With respect to a corporation that is organized as a worker*
2 *cooperative, the corporation's "patrons" are its workers, those*
3 *persons who purchase goods or services from the corporation,*
4 *and those persons whose products or services are marketed,*
5 *processed, or handled by the corporation.*

6 **"Patronage"**

7 (c) *"Patronage" of a patron is measured by the volume or value,*
8 *or both, of a patron's labor provided for, purchases of—such*
9 *products from, and use of—such services furnished by, the*
10 *corporation, and by—such the products and services provided by*
11 *the patron to the corporation for marketing.*

12 SEC. 5. Section 12253 of the Corporations Code is amended
13 to read:

14 12253. (a) "Voting power" means the power to vote for the
15 election of directors at the time any determination of voting power
16 is made and does not include the right to vote upon the happening
17 of some condition or event which has not yet occurred. In any case
18 where different classes of memberships are entitled to vote as
19 separate classes for different members of the board, the
20 determination of percentage of voting power shall be made on the
21 basis of the percentage of the total number of authorized directors
22 which the memberships in question (whether of one or more
23 classes) have the power to elect in an election at which all
24 memberships then entitled to vote for the election of any directors
25 are voted.

26 (b) *If a worker cooperative corporation has authorized voting*
27 *rights for a worker member class and one or more additional*
28 *classes of members, then at least a majority of the authorized*
29 *directors shall be elected by the worker member class.*

30 SEC. 6. Section 12310 of the Corporations Code is amended
31 to read:

32 12310. The articles of incorporation of a corporation formed
33 under this part shall set forth:

34 (a) The name of the corporation.

35 (b) The following statement:

36 "This corporation is a cooperative corporation organized under
37 the ~~Consumer~~ Cooperative Corporation Law. The purpose of this
38 corporation is to engage in any lawful act or activity for which a
39 corporation may be organized under such law."

1 [The articles may include a further description of the
2 corporation’s purposes.]

3 (c) The name and address in this state of the corporation’s initial
4 agent for service of process in accordance with subdivision (b) of
5 Section 12570.

6 (d) Whether the voting power or the proprietary interests of the
7 members are equal or unequal. If the voting power or proprietary
8 interests of the members are unequal, the articles shall state either

9 (i) the general rule or rules by which the voting power and
10 proprietary interests of the members shall be determined or (ii)
11 that such rule or rules shall be prescribed in the corporation’s
12 bylaws. Equal voting power means voting power apportioned on
13 the basis of one vote for each member. Equal proprietary rights
14 means property rights apportioned on the basis of one proprietary
15 unit for each member.

16 SEC. 7. Section 12330 of the Corporations Code is amended
17 to read:

18 12330. (a) Except as provided in subdivision (c) and Sections
19 12331, 12360, 12364, 12462, and 12484, bylaws may be adopted,
20 amended, or repealed by the board unless the action would:

21 (1) Materially and adversely affect the rights or obligations of
22 members as to voting, dissolution, redemption, transfer,
23 distributions, patronage distributions, patronage, property rights,
24 or rights to repayment of contributed capital;

25 (2) Increase or decrease the number or members authorized in
26 total or for any class;

27 (3) Effect an exchange, reclassification or cancellation of all or
28 part of the memberships; or

29 (4) Authorize a new class of membership.

30 (b) Bylaws may be adopted, amended or repealed by approval
31 of the members (Section 12224); provided, however, that adoption,
32 amendment, or repeal also requires approval by the members of a
33 class if that action would:

34 (1) Materially and adversely affect the rights or obligations of
35 that class as to voting, dissolution, redemption, transfer,
36 distributions, patronage distributions, patronage, property rights,
37 or rights to repayment of contributed capital, in a manner different
38 than such action affects another class;

39 (2) Materially and adversely affect such class as to voting,
40 dissolution, redemption, transfer, distributions, patronage

1 distributions, patronage, property rights, or rights to repayment of
2 contributed capital, by changing the rights, privileges, preferences,
3 restrictions or conditions of another class;

4 (3) Increase or decrease the number of memberships authorized
5 for such class;

6 (4) Increase the number of memberships authorized for another
7 class;

8 (5) Effect an exchange, reclassification or cancellation of all or
9 part of the memberships of such class; or

10 (6) Authorize a new class of memberships.

11 (c) The articles or bylaws may restrict or eliminate the power
12 of the board to adopt, amend or repeal any or all bylaws, subject
13 to subdivision (e) of Section 12331.

14 (d) Bylaws may also provide that repeal or amendment of those
15 bylaws, or the repeal or amendment of specified portions of those
16 bylaws, may occur only with the approval in writing of a specified
17 person or persons other than the board or members. However, this
18 approval requirement, unless the articles or the bylaws specify
19 otherwise, shall not apply if any of the following circumstances
20 exist:

21 (1) The specified person or persons have died or ceased to exist.

22 (2) If the right of the specified person or persons to approve is
23 in the capacity of an officer, trustee, or other status and the office,
24 trust, or status has ceased to exist.

25 (3) If the corporation has a specific proposal for amendment or
26 repeal, and the corporation has provided written notice of that
27 proposal, including a copy of the proposal, to the specified person
28 or persons at the most recent address for each of them, based on
29 the corporation's records, and the corporation has not received
30 written approval or nonapproval within the period specified in the
31 notice, which shall not be less than 10 nor more than 30 days
32 commencing at least 20 days after the notice has been provided.

33 *(e) If the corporation elects to be governed by provisions of this*
34 *part pertaining specifically to a worker cooperative, the*
35 *corporation shall state in its bylaws that it is a worker cooperative.*

36 SEC. 8. Section 12404 of the Corporations Code is amended
37 to read:

38 12404. (a) Except as permitted in Section 12314, the voting
39 power of members having voting rights shall be equal.

1 (b) *Within each class in which a member of a worker*
 2 *cooperative has voting rights, each member shall have one vote*
 3 *on any matter put before the class for a vote; provided, however,*
 4 *that when members are entitled to vote together as a single class*
 5 *on a matter, each member shall have only one vote regardless of*
 6 *the number of voting classes to which the member belongs.*

7 SEC. 9. Section 12446 of the Corporations Code is amended
 8 to read:

9 12446. (a) Subject to the provisions of subdivision (b), the
 10 provisions of Chapter 7 (commencing with Section 1500) of Title
 11 10 of Part 3 of the Code of Civil Procedure shall not apply to any
 12 proprietary interest in a ~~consumer~~ cooperative corporation. Any
 13 proprietary interest that would otherwise escheat to the state
 14 pursuant to Chapter 7 (commencing with Section 1500) of Title
 15 10 of Part 3 of the Code of Civil Procedure shall instead become
 16 the property of the corporation.

17 (b) Notwithstanding the provisions of subdivision (a), no
 18 proprietary interest shall become the property of the corporation
 19 under this section unless the following requirements are satisfied:

20 (1) The articles or bylaws shall specifically provide for the
 21 transfer of ownership of the otherwise escheated proprietary
 22 interests to the corporation.

23 (2) At least 60 days prior notice of the proposed transfer of the
 24 proprietary interest to the corporation is given to the affected
 25 member by first-class or second-class mail to the last address of
 26 the member shown on the corporation’s records, and by publication
 27 in a newspaper of general circulation in the county in which the
 28 corporation has its principal office. Notice given in the foregoing
 29 manner shall be deemed actual notice.

30 (3) No proprietary interest shall become the property of the
 31 corporation under this section if written notice objecting thereto
 32 is received by the corporation from the affected member prior to
 33 the date of the proposed transfer.

34 (c) For purposes of this section, a “proprietary interest” shall
 35 mean and include any membership, membership certificate,
 36 membership share, or share certificate of any class representing a
 37 proprietary interest in, and issued by, the corporation together with
 38 all accrued and unpaid dividends and patronage distributions
 39 relating thereto.

1 SEC. 10. Section 12461 of the Corporations Code is amended
2 to read:

3 12461. (a) (1) Whenever members *who are not worker*
4 *members of a worker cooperative* are required or permitted to take
5 any action at a meeting, a written notice of the meeting shall be
6 given not less than 10 nor more than 90 days before the date of
7 the meeting to each *nonworker* member who, on the record date
8 for notice of the meeting, is entitled to vote ~~thereat at the meeting~~;
9 provided, however, that if notice is given by mail, and the notice
10 is not mailed by first-class, registered, or certified mail, that notice
11 shall be given not less than 20 days before the meeting. ~~Subject~~

12 (2) *Whenever worker members of a worker cooperative are*
13 *required or permitted to take any action at a meeting, notice of*
14 *the meeting shall be given not less than 24 hours before the time*
15 *of the meeting to each worker member who, on the record date for*
16 *notice of the meeting, is entitled to vote at the meeting.*

17 (3) *Subject* to subdivision (f), and subdivision (b) of Section
18 12462, that notice shall state the place, date and time of the
19 meeting, the means of electronic transmission by and to the
20 corporation (Sections 20 and 21) or electronic video screen
21 communication, if any, by which members may participate in that
22 meeting, and (1) in the case of a special meeting, the general nature
23 of the business to be transacted, and no other business may be
24 transacted, or (2) in the case of the regular meeting, those matters
25 which the board, at the time the notice is given, intends to present
26 for action by the members, but, except as provided in subdivision
27 (b) of Section 12462, any proper matter may be presented at the
28 meeting for such action. The notice of any meeting at which
29 directors are to be elected shall include the names of all those who
30 are nominees at the time the notice is given to members.

31 (b) Notice of a members' meeting or any report shall be given
32 personally, by electronic transmission by the corporation, or by
33 mail or other means of written communication, addressed to a
34 member at the address of such member appearing on the books of
35 the corporation or given by the member to the corporation for
36 purpose of notice; or if no such address appears or is given, at the
37 place where the principal office of the corporation is located or by
38 publication at least once in a newspaper of general circulation in
39 the county in which the principal office is located. An affidavit of
40 giving of any notice or report in accordance with the provisions

1 of this part, executed by the secretary, assistant secretary or any
2 transfer agent, shall be prima facie evidence of the giving of the
3 notice or report.

4 If any notice or report addressed to the member at the address
5 of such member appearing on the books of the corporation is
6 returned to the corporation by the United States Postal Service
7 marked to indicate the United States Postal Service is unable to
8 deliver the notice or report to the member at such address, all future
9 notices or reports shall be deemed to have been duly given without
10 further mailing if the same shall be available for the member upon
11 written demand of the member at the principal office of the
12 corporation for a period of one year from the date of the giving of
13 the notice or report to all other members.

14 Notice given by electronic transmission by the corporation under
15 this subdivision shall be valid only if it complies with Section 20.
16 Notwithstanding the foregoing, notice shall not be given by
17 electronic transmission by the corporation under this subdivision
18 after either of the following:

19 (1) The corporation is unable to deliver two consecutive notices
20 to the member by that means.

21 (2) The inability to so deliver the notices to the member becomes
22 known to the secretary, any assistant secretary, the transfer agent,
23 or other person responsible for the giving of the notice.

24 (c) Upon request in writing to the corporation addressed to the
25 attention of the chairman of the board, president, vice president
26 or secretary by any person (other than the board) entitled to call a
27 special meeting of members, the officer forthwith shall cause notice
28 to be given to the members entitled to vote that a meeting will be
29 held at a time fixed by the board not less than 35 nor more than
30 90 days after the receipt of the request. If the notice is not given
31 within 20 days after receipt of the request, the persons entitled to
32 call the meeting may give the notice or the superior court of the
33 proper county shall summarily order the giving of the notice, after
34 notice to the corporation giving it an opportunity to be heard. The
35 court may issue such orders as may be appropriate, including,
36 without limitation, orders designating the time and place of the
37 meeting, the record date for determination of members entitled to
38 vote and the form of notice.

39 (d) When a members' meeting is adjourned to another time or
40 place, unless the bylaws otherwise require and except as provided

1 in this subdivision, notice need not be given of the adjourned
2 meeting if the time and place thereof (or the means of electronic
3 transmission by and to the corporation or electronic video screen
4 communication, if any, by which members may participate) are
5 announced at the meeting at which the adjournment is taken. At
6 the adjourned meeting the corporation may transact any business
7 which might have been transacted at the original meeting. If the
8 adjournment is for more than 45 days or if after the adjournment
9 a new record date is fixed for the adjourned meeting, a notice of
10 the adjourned meeting shall be given to each member of record
11 entitled to vote at the meeting.

12 (e) The transactions of any meeting of members however called
13 and noticed, and wherever held, are as valid as though had at a
14 meeting duly held after regular call and notice, if a quorum is
15 present, and if, either before or after the meeting, each of the
16 persons entitled to vote, not present in person, provides a waiver
17 of notice or consent to the holding of the meeting or an approval
18 of the minutes thereof in writing. All such waivers, consents and
19 approvals shall be filed with the corporate records or made a part
20 of the minutes of the meeting. Attendance of a person at a meeting
21 shall constitute a waiver of notice of and presence at such meeting,
22 except when the person objects, at the beginning of the meeting,
23 to the transaction of any business because the meeting is not
24 lawfully called or convened and except that attendance at a meeting
25 is not a waiver of any right to object to the consideration of matters
26 required by this part to be included in the notice but not so
27 included, if such objection is expressly made at the meeting.
28 Neither the business to be transacted at nor the purpose of any
29 regular or special meeting of members need be specified in any
30 written waiver of notice, consent to the holding of the meeting or
31 approval of the minutes thereof, unless otherwise provided in the
32 articles or bylaws, except as provided in subdivision (f).

33 (f) Any approval of the members required under Section 12362,
34 12364, 12373, 12502 or 12658 other than unanimous approval by
35 those entitled to vote, shall be valid only if the general nature of
36 the proposal so approved was stated in the notice of meeting or in
37 any written waiver of notice.

38 (g) A court may find that notice not given in conformity with
39 this section is still valid, if it was given in a fair and reasonable
40 manner.

1 (h) Subject to the provisions of subdivision (i), and unless
 2 prohibited by the articles or bylaws, prior to any regular or special
 3 meeting of members, the board may authorize distribution of a
 4 written ballot to every member entitled to vote at the meeting.
 5 Such ballot shall set forth the action proposed to be taken at the
 6 meeting, shall provide an opportunity to specify approval or
 7 disapproval of the proposed action, and shall state that unless
 8 revoked by the member voting in person at the meeting, the ballot
 9 will be counted if received by the corporation on or before the time
 10 of the meeting with respect to which it was sent. If ballots are so
 11 distributed with respect to a meeting, the number of members
 12 voting at the meeting by unrevoked written ballots shall be deemed
 13 present at the meeting for purposes of determining the existence
 14 of a quorum pursuant to subdivision (a) of Section 12462 but only
 15 with respect to the proposed action referred to in the ballots. These
 16 ballots shall be distributed in a manner consistent with the
 17 requirements of subdivision (b) and Section 12464.

18 (i) Unless prohibited by the articles or bylaws, written ballots
 19 may be distributed in a manner contemplated by subdivision (h)
 20 with respect to the election of directors, except that no ballots may
 21 be so distributed with respect to the election of directors if
 22 cumulative voting is permitted pursuant to Section 12484.

23 SEC. 11. The heading of Part 2 (commencing with Section
 24 12200) of Division 3 of Title 1 of the Corporations Code is
 25 amended to read:

26
 27 **PART 2. ~~CONSUMER~~-COOPERATIVE CORPORATIONS**

28
 29 SEC. 12. No reimbursement is required by this act pursuant to
 30 Section 6 of Article XIII B of the California Constitution because
 31 the only costs that may be incurred by a local agency or school
 32 district will be incurred because this act creates a new crime or
 33 infraction, eliminates a crime or infraction, or changes the penalty
 34 for a crime or infraction, within the meaning of Section 17556 of
 35 the Government Code, or changes the definition of a crime within
 36 the meaning of Section 6 of Article XIII B of the California
 37 Constitution.