ASSEMBLY BILL NO. 366–ASSEMBLYMEN BENITEZ-THOMPSON; AND BOBZIEN

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions governing nonprofit cooperative corporations. (BDR 7-764)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to nonprofit corporations; revising certain provisions governing nonprofit cooperative corporations; revising certain provisions governing mergers, conversions and exchanges of nonprofit cooperative corporations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a nonprofit cooperative corporation from paying dividends on stock or membership certificates in excess of 8 percent annually. Existing law also prohibits such corporations from dealing in the products of nonmembers in amounts greater in value than it handles for its members. (NRS 81.020) **Section 1** of this bill provides that a nonprofit cooperative corporation may distribute surplus funds and may issue refunds to its members in accordance with its articles of incorporation. **Section 1** revises existing law to authorize a nonprofit cooperative corporation to deal in the products of nonmembers in amounts greater in value than it handles for its members, if not prohibited by its articles of incorporation.

Existing law requires that the name of a nonprofit cooperative corporation be included in its articles of incorporation. (NRS 81.040) **Section 2** of this bill requires that the name of a such a corporation contain the word "Cooperative," the word "Co-op" or the abbreviation "N.C.C."

Existing law requires a majority vote by the members of a nonprofit cooperative corporation to adopt the initial code of bylaws of the nonprofit cooperative corporation. The authority to amend such bylaws is conferred upon the members or may, under certain circumstances, be conferred upon the directors. (NRS 81.080) **Section 3** of this bill revises the number of votes required to transfer that authority to the board of directors from a two-thirds vote to a majority vote.

Existing law establishes procedures for mergers, conversions and exchanges involving various entities, including nonprofit cooperative corporations which, for the purposes of those procedures, fall within the definition of the term "domestic corporation." Under existing law, the board of directors of a domestic corporation, including a nonprofit cooperative corporation, is prohibited from adopting a plan of merger, conversion or exchange without the approval of its stockholders under certain circumstances. (Chapter 92A of NRS) **Sections 4-11** of this bill: (1) remove nonprofit cooperative corporations from the definition of the term "domestic corporation"; (2) provide that a plan of merger, conversion or exchange must be approved and adopted by the board of directors unless otherwise provided for in the articles of incorporation; and (3) revise various provisions concerning mergers, conversions and exchanges to reflect the removal of nonprofit cooperative corporations from the definition of the term "domestic corporation" while maintaining the applicability of those provisions to nonprofit cooperative corporations.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 81.020 is hereby amended to read as follows:

81.020 1. The corporation may or may not have capital stock, and its business must be operated for the mutual benefit of the members thereof.

2. No member of the cooperative corporation may have more than one vote in the management of its affairs. Meetings of the association or meetings of the board of directors may be held in or outside this State.

3. The corporation shall not pay dividends on stock or membership certificates in excess of 8 percent per annum.

4. The corporation or association, as it may be called, may deal in the products of nonmembers, but not to an amount greater in value than such as are handled by it for members ~~[.]~~ ***, unless otherwise provided in its articles of incorporation or bylaws.***

5. Nothing contained in this section shall be construed to prohibit the corporation from distributing surplus funds or issuing refunds to its members in accordance with its articles of incorporation.

Sec. 2. NRS 81.040 is hereby amended to read as follows:

81.040 Each corporation formed under NRS 81.010 to 81.160, inclusive, must prepare and file articles of incorporation in writing, setting forth:

1. The name of the corporation ~~[.]~~ ***, which must contain the word "Cooperative" or "Co-op" or the abbreviation "N.C.C."***

2. The purpose for which it is formed.

3. The information required pursuant to NRS 77.310.

4. The term for which it is to exist, which may be perpetual.

5. If formed with stock, the amount of its stock and the number and par value, if any, and the shares into which it is divided, and the amount of common and of preferred stock that may be issued with

the preferences, privileges, voting rights, restrictions and qualifications pertaining thereto.

6. The names and addresses of those selected to act as directors, not less than three, for the first year or until their successors have been elected and have accepted office.

7. Whether the property rights and interest of each member are equal or unequal, and if unequal the articles must set forth a general rule applicable to all members by which the property rights and interests of each member may be determined, but the corporation may admit new members who may vote and share in the property of the corporation with the old members, in accordance with the general rule.

8. The name and mailing or street address, either residence or business, of each of the incorporators signing the articles of incorporation.

Sec. 3. NRS 81.080 is hereby amended to read as follows:

81.080 1. Each corporation incorporated under NRS 81.010 to 81.160, inclusive, must, within 1 month after filing articles of incorporation, adopt a code of bylaws for its government and management not inconsistent with the provisions of NRS 81.010 to 81.160, inclusive. A majority vote of the ~~[membership,]~~ ***members or directors,*** or the written assent of ***such*** members ***or directors*** representing a majority of the votes, is necessary to adopt such bylaws.

2. The power to make additional bylaws and to alter the bylaws ***, if*** adopted ***by the members or directors*** under the provisions of subsection 1 ~~[shall be]~~ ***, must remain*** in the members, but any corporation may, in its articles of incorporation, original or amended, or by resolution adopted by a ~~[two-thirds]~~ ***majority*** vote, or by written consent of two-thirds of the members, confer that power upon the directors. Bylaws made by the directors under power so conferred, may be altered by the directors or by the members. The written consent of the owners of two-thirds of the stock or of two-thirds of the members shall suffice to adopt bylaws in addition to those adopted under the provisions of subsection 1, and to amend or repeal any bylaw.

3. All bylaws in force must be copied legibly in a book called the Book of Bylaws, kept at all times for inspection in the principal office. Until so copied, they shall not be effective or in force.

Sec. 4. NRS 82.011 is hereby amended to read as follows:

82.011 "Articles of incorporation" and "articles" are synonymous terms and, unless the context otherwise requires, include all certificates filed pursuant to NRS 82.081, 82.346, 82.356 and 82.371 and any articles of merger filed pursuant to NRS 92A.005 to 92A.260, inclusive ~~[.]~~ ***, and sections 6 and 7 of this act.***

Sec. 5. Chapter 92A of NRS is hereby amended by adding thereto the provisions set forth as sections 6 and 7 of this act.

Sec. 6. ***"Nonprofit cooperative corporation" means a nonprofit cooperative corporation organized pursuant to NRS 81.010 to 81.160, inclusive.***

Sec. 7. ***Unless otherwise provided in the articles of incorporation, a plan of merger, conversion or exchange involving a nonprofit cooperative corporation must be approved and adopted by the board of directors.***

Sec. 8. NRS 92A.005 is hereby amended to read as follows:

92A.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 92A.007 to 92A.092, inclusive, ***and section 6 of this act*** have the meanings ascribed to them in those sections.

Sec. 9. NRS 92A.025 is hereby amended to read as follows:

92A.025 "Domestic corporation" means a corporation organized and existing under chapter 78, 78A or 89 of NRS ***.*** ~~[, or a nonprofit cooperative corporation organized pursuant to NRS 81.010 to 81.160, inclusive.]~~

Sec. 10. NRS 92A.170 is hereby amended to read as follows:

92A.170 After a merger, conversion or exchange is approved, and at any time before the articles of merger, conversion or exchange are filed, the planned merger, conversion or exchange may be abandoned, subject to any contractual rights, without further action, in accordance with the procedure set forth in the plan of merger, conversion or exchange or, if none is set forth, in the case of:

1. A domestic corporation, whether or not for profit, by the board of directors;

2. A domestic limited partnership, unless otherwise provided in the partnership agreement or certificate of limited partnership, by all general partners;

3. A domestic limited-liability company, unless otherwise provided in the articles of organization or an operating agreement, by members who own a majority in interest in the current profits of the company then owned by all of the members or, if the company has more than one class of members, by members who own a majority in interest in the current profits of the company then owned by the members in each class;

4. A domestic business trust, unless otherwise provided in the certificate of trust or governing instrument, by all the trustees; ~~[and]~~

5. A domestic general partnership, unless otherwise provided in the partnership agreement, by all the partners ~~[.]~~ ***; and***

6. A nonprofit cooperative corporation, unless otherwise provided in the articles of incorporation, by the board of directors.

Sec. 11. NRS 92A.210 is hereby amended to read as follows:

92A.210 1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of conversion, articles of exchange, articles of domestication or articles of termination is $350. The fee for filing the charter documents of a domestic resulting entity is the fee for filing the charter documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations ***, including, without limitation, a nonprofit cooperative corporation,*** is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations ***, including, without limitation, a nonprofit cooperative corporation,*** with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic ***corporations, including, without limitation, nonprofit cooperative corporations,*** or foreign corporations must not be less than $350. The amount paid pursuant to subsection 3 must not exceed $35,000.

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