



1 restated articles of incorporation, and other organizational  
2 documents of other entities.

3 "Board of directors" or "board" means the board of  
4 directors or other governing body of a cooperative or other  
5 entity.

6 "Bylaws" means the bylaws adopted by a cooperative and  
7 includes amended bylaws and restated bylaws.

8 "Capital account cooperative" means a worker cooperative in  
9 which the entire net book value is reflected in member capital  
10 accounts, one for each member, and an unallocated capital  
11 account, if any.

12 "Collective board worker cooperative" means a worker  
13 cooperative in which there is only one class of members  
14 consisting of worker-members, all of whom are members of the  
15 board.

16 "Community investor" means a person who is not a worker-  
17 member and who holds a share or other proprietary interest in a  
18 worker cooperative.

19 "Cooperative" means any entity formed under or subject to  
20 this chapter by election or otherwise, including a cooperative



1 formed under comparable law of another jurisdiction doing  
2 business in this State and having the following characteristics:

3 (1) The business of the cooperative is operated at cost by  
4 adjusting the prices charged for goods or services or  
5 by returning any net margins at the end of a fiscal  
6 year on a patronage basis to members and other persons  
7 qualified to share in the net margins pursuant to the  
8 articles or bylaws;

9 (2) Dividends on stock or interest on equity capital is  
10 limited, as prescribed in the articles or bylaws of  
11 the cooperative;

12 (3) Voting rights are limited to members of the  
13 cooperative as prescribed in the articles or bylaws of  
14 the cooperative;

15 (4) The cooperative's business is carried on for the  
16 mutual benefit of its members; and

17 (5) Members are not liable for any debt, obligation, or  
18 liability of the cooperative.

19 "Domestic" means an entity formed under the laws of this  
20 State.



1 "Equity capital" means all investments in the cooperative  
2 except loans or other types of indebtedness, whether made by  
3 direct investment, such as investment in stock or memberships,  
4 or by retention of amounts of net savings, net margins, or net  
5 profits allocated to members and other patrons of the  
6 cooperative, or charged to them as part of the transactions  
7 between them and the cooperative.

8 "Foreign" means an entity formed under law other than the  
9 law of this State.

10 "Member" means a person who has been received into the  
11 membership of a cooperative without common stock or a person or  
12 stockholder who has acquired common stock in a cooperative  
13 formed with common stock and, in either case, is authorized to  
14 vote.

15 "Net margins" means the receipts from operations less the  
16 expenses thereof.

17 "Patron" means a person who may, but need not, be a member  
18 of a cooperative who uses the services of the cooperative  
19 through the purchase or sale of property or services to or from  
20 the cooperative. If the corporation is organized as a worker  
21 cooperative, the corporation's "patrons" are its worker-members.



1 "Patronage" means the volume or dollar value of business  
2 transacted with the cooperative. If the corporation is  
3 organized as a worker cooperative, "patronage" may be measured  
4 by work performed including wages earned, number of hours  
5 worked, number of jobs created, or some combination of these  
6 measures.

7 "Patronage refund" means a portion of a cooperative's net  
8 margins paid or allocated to a patron based on the patron's  
9 patronage.

10 "Per unit retain" means a deduction authorized by a patron  
11 to be made by the cooperative from proceeds of sale of a product  
12 or service by the patron to the cooperative or by the  
13 cooperative on behalf of the patron where the deduction is based  
14 upon the value or quantity of the product or service sold to the  
15 cooperative or on behalf of the patron and is deducted as a  
16 contribution or investment by the patron in the capital of the  
17 cooperative.

18 "Person" includes individuals, partnerships, corporations,  
19 limited liability companies, and associations, sacred species,  
20 and natural ecosystems.



1 "Worker" means a natural person contributing labor or  
2 services to a worker cooperative.

3 "Worker cooperative" means a corporation formed under this  
4 part that includes a class of worker-members who are natural  
5 persons whose patronage consists of labor contributed to or  
6 other work performed for the corporation.

7 "Worker-member" means a member of a worker cooperative who  
8 is a natural person and is also a patron of a worker  
9 cooperative.

10 § -2 Annual report. (a) A cooperative formed under  
11 this chapter shall file with the director of commerce and  
12 consumer affairs an annual report. The annual report shall  
13 contain:

- 14 (1) The name of the cooperative;
- 15 (2) The mailing address of its principal office, the  
16 address of its registered office in this State, and  
17 the name of its registered agent at its registered  
18 office in the State; and
- 19 (3) A general statement of its business operations during  
20 the fiscal year that includes:
- 21 (A) The amount of capital stock paid up;



# H.B. NO. 1895

1           (B) The number of shareholders, if a stock  
2           corporation, or the number of members and the  
3           amount of membership fees received, if a nonstock  
4           association;

5           (C) An income statement; and

6           (D) Its balance sheet.

7           (b) The annual report shall be filed within the time  
8           periods prescribed in subsection (c).

9           (c) Effective January 1, 2020, for cooperatives whose date  
10          of registration in this State falls between:

11          (1) January 1 and March 31, an annual report shall be  
12          filed on or before March 31 of each year and shall  
13          reflect the state of the cooperative's affairs as of  
14          January 1 of the year when filed;

15          (2) April 1 and June 30, an annual report shall be filed  
16          on or before June 30 of each year and shall reflect  
17          the state of the cooperative's affairs as of April 1  
18          of the year when filed;

19          (3) July 1 and September 30, an annual report shall be  
20          filed on or before September 30 of each year and shall



1 reflect the state of the cooperative's affairs as of  
2 July 1 of the year when filed; and  
3 (4) October 1 and December 31, an annual report shall be  
4 filed on or before December 31 of each year and shall  
5 reflect the state of the cooperative's affairs as of  
6 October 1 of the year when filed; provided that if a  
7 cooperative is formed in the same year in which the  
8 annual report is due, the cooperative shall not be  
9 required to file an annual report for that year.  
10 Thereafter, the cooperative shall comply with the  
11 requirements of this section.

12 (d) A copy of the report shall be submitted to the members  
13 at their annual meeting, or mailed to each member of the  
14 cooperative, or printed in an official publication of the  
15 cooperative.

16 **§ -3 Cooperative records.** (a) A cooperative shall keep  
17 as permanent records, minutes of all meetings of its members and  
18 of the board, a record of all actions taken by the members or  
19 the board without a meeting by a written unanimous consent in  
20 lieu of a meeting, and a record of all waivers of notices of  
21 meetings of the members and of the board.





1           (b) A cooperative shall maintain appropriate accounting  
2 records.

3           (c) A cooperative shall maintain its records in written  
4 form or in another form capable of conversion into written form  
5 within a reasonable time.

6           (d) A cooperative shall keep a copy of each of the  
7 following records at its principal office:

8           (1) Its articles of incorporation or other governing  
9 instrument;

10          (2) Its bylaws or other similar instrument;

11          (3) A record of the names and addresses of its members, in  
12 a form that permits preparation of a list of members  
13 that is alphabetical and that shows each member's  
14 address and the investment qualifying a member to vote  
15 held by each member;

16          (4) The minutes of members' meetings, and records of all  
17 actions taken by members without a meeting by  
18 unanimous written consent in lieu of a meeting, for  
19 the past three years;



1           (5) All written communications within the past three years  
2           to members as a group or to any class of members as a  
3           group;

4           (6) A list of the names and business addresses of its  
5           current board of directors and officers;

6           (7) A copy of its most recent annual report pursuant to  
7           section     -2; and

8           (8) All financial statements prepared for periods ending  
9           during the last fiscal year.

10          (e) Except as otherwise limited by this chapter, the board  
11 of directors of a cooperative shall have discretion to determine  
12 what records are appropriate for the purposes of the  
13 cooperative, the length of time records are to be retained, and  
14 policies relating to the confidentiality, disclosure, inspection  
15 and copying of the records of the cooperative.

16          §   -4 **Referendum.** The articles or bylaws may provide  
17 that upon demand of two-fifths of all the directors, or by the  
18 affirmative vote of two-thirds of the members voting thereon at  
19 any regular meeting or at a special meeting called for the  
20 purpose, any matter of policy that has been approved or passed



1 by the board must be referred to the members for their approval  
2 before it becomes effective.

3 § -5 **Volunteers exempted.** Section 421C-33 shall apply  
4 to cooperatives formed under this chapter.

5 **PART II. INCORPORATION**

6 § -6 **Articles of incorporation.** (a) A cooperative may  
7 be formed pursuant to this chapter for the transaction of any  
8 lawful business. One or more persons may act as the  
9 incorporator or incorporators of a cooperative by delivering  
10 articles for the cooperative to the director of commerce and  
11 consumer affairs for filing.

12 (b) The articles shall state:

13 (1) The domestic entity name of the cooperative, which  
14 domestic entity name shall comply with section 414D-61  
15 and shall include the word "cooperative" as part of  
16 the name;

17 (2) The principal office address of the cooperative's  
18 principal office;

19 (3) The registered agent name and registered agent address  
20 of the cooperative's initial registered agent;



- 1           (4) If formed without common voting stock, whether the  
2           property rights and interests of each member are equal  
3           or unequal and, if unequal, the general rule or rules  
4           applicable to all members by which the property rights  
5           and interests of each member are determined and fixed;  
6           provisions for the admission of new members who are  
7           entitled to share in the property of the cooperative  
8           with the old members in accordance with such general  
9           rules; and whether the cooperative is authorized to  
10          issue one or more classes of preferred stock or other  
11          equity interests and, if so authorized, a statement as  
12          to the number of shares of stock of each class or  
13          other equity interests and the nature and extent of  
14          the preferences, limitations, relative rights, and  
15          privileges granted to each;
- 16          (5) If formed with stock, the classes of shares and the  
17          number of shares of each class the cooperative is  
18          authorized to issue. The stock may be divided into  
19          preferred and common stock, voting and nonvoting  
20          stock, or into any other class of stock. If so  
21          divided, the articles shall contain a statement as to



1 the number of shares of stock in each class and the  
2 nature and extent of the preferences, limitations,  
3 relative rights, and privileges granted to each; and  
4 (6) The true name and mailing address of each  
5 incorporator.  
6 (c) The articles may contain provisions:  
7 (1) Eliminating or limiting the personal liability of a  
8 director as provided in this chapter;  
9 (2) Specifying the number and terms of the board of  
10 directors, which number shall be not less than three,  
11 together with the names and the street addresses of  
12 the initial directors. If the names of the initial  
13 directors are not stated in the articles, the initial  
14 board of directors shall be designated by the  
15 incorporator or incorporators following the delivery  
16 of the articles to the secretary of state for filing;  
17 (3) Specifying the purpose or purposes for which the  
18 cooperative is incorporated that may state any lawful  
19 business;  
20 (4) Specifying a par value for authorized shares of stock  
21 or classes of shares;



# H.B. NO. 1895

- 1           (5) Defining, limiting, and regulating the powers of the  
2                   cooperative, its board, and its members;
- 3           (6) Limiting membership to producers of agricultural  
4                   products;
- 5           (7) Limiting the handling of products or services for its  
6                   own members only, or for members and nonmembers, and  
7                   whether nonmembers are entitled to share in  
8                   allocations of net margins or are subject to per unit  
9                   retains;
- 10          (8) For the removal for cause of any director by the  
11                   members at any regular or special members' meeting;
- 12          (9) Eliminating or limiting the indemnification of  
13                   directors, officers, employees, or agents of the  
14                   cooperatives as otherwise provided in this chapter;
- 15          (10) Required or permitted under this chapter to be stated  
16                   in the bylaws;
- 17          (11) Not inconsistent with law; and
- 18          (12) Specifying whether the cooperative has elected to be  
19                   governed as a worker cooperative.
- 20          (d) When incorporated, no member or shareholder shall be  
21                   liable directly or indirectly, including by way of



1 indemnification, contribution, or otherwise, under a judgment,  
2 decree, or order of a court, or in any other manner for a debt,  
3 obligation, or liability of, or chargeable to, the cooperative.

4 (e) A member does not have any vested property right  
5 resulting from any provision in the articles that may exist from  
6 time to time or at any time including any provision relating to  
7 management, control, capital structure, dividend entitlement  
8 purpose, or duration of the cooperative.

9 § -7 **Amendment of articles.** (a) A cooperative may  
10 amend its articles of incorporation by the affirmative vote of  
11 two-thirds of the members voting thereon at any regular meeting,  
12 or at a special meeting called for the purpose, or if the  
13 cooperative permits its members to vote on the basis of  
14 patronage, by the affirmative vote of a majority of the members  
15 and of two-thirds of the patronage, voting thereon. A written  
16 or printed notice of the proposed amendment, and of the time and  
17 place of holding the meetings shall be delivered to each member,  
18 or mailed to the member's last known address as shown by the  
19 books of the cooperative, at least thirty days prior to any  
20 meetings. No amendment affecting the preferential rights of any  
21 outstanding stock shall be adopted until the written consent of



1 the holders of two-thirds of the outstanding preference shares  
2 has been obtained.

3 (b) Unless otherwise provided in the articles, the board  
4 may adopt, without shareholder action, one or more amendments to  
5 the articles to:

6 (1) Delete the statement of names and addresses of the  
7 incorporators or of the initial directors;

8 (2) Delete the statement of the registered agent name and  
9 registered agent address of the initial registered  
10 agent or registered office, if a statement of change  
11 is on file at the director of commerce and consumer  
12 affairs containing the registered agent name and  
13 registered agent address of the cooperative's  
14 registered agent;

15 (3) Delete the statement of the names and addresses of any  
16 or all of the individuals named in the articles as  
17 being individuals who caused the articles to be  
18 delivered for filing; and

19 (4) Except as otherwise prohibited by law, change each  
20 issued and unissued share of a class into a greater





1           number of whole shares if the cooperative has only  
2           shares of that class outstanding.

3           (c) After an amendment has been adopted, the articles of  
4 amendment shall be certified and executed by the president or  
5 vice president and by the treasurer or secretary or assistant  
6 secretary, and filed as in the case of articles of  
7 incorporation, including the payment of fees.

8           (d) Any amendment to the articles may not be invalidated  
9 because of the manner of its adoption unless an action to do so  
10 is commenced within two years after the date of filing.

11           § -8 Cooperatives desiring to relinquish provisions of  
12 this chapter. (a) Any cooperative formed under, or that has  
13 elected to be subject to, this chapter may relinquish being  
14 bound by this chapter by amending its articles in the manner  
15 provided in this chapter; provided that the amendment shall be  
16 approved by a two-thirds majority of all the members present and  
17 voting in person or in any other manner authorized by the  
18 cooperative pursuant to this chapter unless a greater vote is  
19 required by the articles or bylaws.



1           (b) The board shall present to the members for approval,  
2 as described in subsection (a), a plan to relinquish the  
3 provisions of this chapter, including:

4           (1) A statement as to what type of business entity the  
5 cooperative is to become after the plan has been  
6 adopted;

7           (2) A statement as to what will be the effect on equities  
8 of the cooperative after the plan has been adopted;  
9 and

10          (3) A statement as to the procedures and mechanisms for  
11 changing the cooperative to another type of entity.

12          (c) Amendments to the articles shall be delivered to the  
13 director of commerce and consumer affairs for filing.

14          § -9 Entities formed under other law but subject to this  
15 chapter. Any domestic entity or foreign entity authorized to  
16 transact business or conduct activities in this State and  
17 engaged in any of the activities enumerated in this chapter but  
18 formed under other law may be considered for all purposes as  
19 subject to this chapter by amending the entity's constituent  
20 operating document as necessary to conform to this chapter and  
21 delivering to the director of commerce and consumer affairs for



1 filing a statement that the entity has determined to accept the  
2 benefits of and to be bound by this chapter and has amended its  
3 constituent operating document as necessary to conform to this  
4 chapter by amendments adopted in accordance with applicable law  
5 and its constituent operating document.

6       § -10 **Bylaws.** (a) The initial board of each  
7 cooperative formed under this chapter, within thirty days after  
8 the articles become effective, shall adopt bylaws for the  
9 government and management of its affairs that are not  
10 inconsistent with law or the articles of the cooperative. The  
11 bylaws may be amended or modified in a manner as the bylaws may  
12 provide. If the bylaws do not provide a manner for their  
13 amendment, the bylaws may be amended at any time upon a majority  
14 vote of the members present and voting in person or in any other  
15 manner authorized by the cooperative pursuant to this chapter at  
16 a regular or special meeting, the notice of which meeting shall  
17 state that consideration will be given at the meeting to  
18 amending the bylaws and stating the proposed amendment or  
19 amendments.

20       (b) The bylaws of the cooperative shall prohibit the  
21 transfer of the voting common stock or membership in the



1 cooperative to persons not eligible to be a member of the  
2 cooperative and, if the cooperative issues certificates of  
3 common stock or of membership, the restrictions shall be printed  
4 upon every certificate of stock or certificate of membership  
5 subject to the restrictions. At the election of the  
6 cooperative, the restrictions may also be included in the  
7 articles.

8 (c) If not stated in the articles, the bylaws of the  
9 cooperative shall specify:

- 10 (1) The qualifications for membership, manner of  
11 succession, and conditions for suspension, withdrawal,  
12 or expulsion;
- 13 (2) The amount of any membership fee or capital  
14 subscription required by the cooperative to become a  
15 member, conditions of membership, and procedures for  
16 acquiring and repayment of membership capital;
- 17 (3) Any limitations on dividends on stock or interest on  
18 equity capital;
- 19 (4) The time, place, and manner of conducting or  
20 determining membership meetings of the cooperative,  
21 which shall be at least annually;



- 1           (5) The number, terms, and time of the election of
- 2                   directors, or the manner for determining the same;
- 3           (6) The number of directors that shall constitute a quorum
- 4                   for a meeting of the board, which shall be at least a
- 5                   majority;
- 6           (7) The number, terms, and titles of officers, their
- 7                   authority and duties as well as the manner of election
- 8                   or appointment, the filling of vacancies, or removal
- 9                   of officers; and
- 10          (8) A requirement that the cooperative's business shall be
- 11                   conducted on a cooperative basis for the mutual
- 12                   benefit of the cooperative's members.
- 13          (d) The bylaws may specify:
- 14            (1) The time, place, and manner of conducting its
- 15                   meetings;
- 16            (2) The mode and manner of removal of directors and the
- 17                   mode and manner of filling vacancies on the board
- 18                   caused by death, resignation, or removal;
- 19            (3) The compensation of directors and officers or the
- 20                   manner for determining compensation;
- 21            (4) The mode and manner of conducting business;



- 1           (5) The mode and manner of conducting elections and
- 2                   provisions for voting by ballots forwarded by mail or
- 3                   otherwise;
- 4           (6) The manner of assignment and transfer of interests in
- 5                   the cooperative;
- 6           (7) The manner of collection and enforcement for member
- 7                   nonpayment or nonperformance, including forfeiture of
- 8                   property rights and interests;
- 9           (8) The method of determination of property rights and
- 10                   interests in the cooperative and the value thereof;
- 11           (9) Methods and procedures for acquiring and returning
- 12                   equity capital to members and other patrons of the
- 13                   cooperative;
- 14           (10) Procedures for the handling of unclaimed equity
- 15                   capital and other funds declared payable by the
- 16                   cooperative and unclaimed by the holder; and
- 17           (11) Any other matter as may be proper to carry out the
- 18                   purpose for which the cooperative was formed or the
- 19                   governance of the cooperative.

20           § -11 Renewable energy cooperatives. (a) A renewable  
21 energy cooperative may be organized for the purpose of promoting



1 electric energy efficiency technologies to its members,  
2 generating electricity from renewable resources and  
3 technologies, and transmitting and selling the electricity at  
4 wholesale.

5 (b) For the purposes of this section, "renewable resources  
6 and technologies" means biomass, geothermal energy, solar  
7 energy, small hydroelectricity, and wind energy. Hydrogen  
8 derived from biomass, geothermal energy, solar energy, small  
9 hydroelectricity, and wind energy shall also be considered to be  
10 renewable energy. "Renewable resources or technologies" does  
11 not include pumped storage facilities; hydroelectricity other  
12 than small hydroelectricity; coal, natural gas, oil, propane, or  
13 any other fossil fuel; nuclear energy; or hydrogen derived from  
14 pumped storage facilities.

15 § -12 **Worker cooperatives.** (a) A corporation organized  
16 under this chapter may elect to be governed as a worker  
17 cooperative by making the following statement in its articles of  
18 incorporation or its amended articles of incorporation: "This  
19 corporation is a worker cooperative corporation organized under  
20 the Hawaii Cooperative Law."



1           (b) A corporation that makes the election to be governed  
2 as a worker cooperative shall be governed by this chapter.

3           (c) A worker cooperative, including a capital account  
4 cooperative or collective board worker cooperative, may be  
5 formed under this chapter.

6           (d) The following shall apply to worker cooperatives:

7           (1) The net earnings and losses of a worker cooperative  
8 shall be apportioned and distributed at the time and  
9 in the manner specified in the articles of  
10 incorporation or bylaws;

11          (2) Net earnings declared as patronage distributions with  
12 respect to a period of time, and paid to a creditor or  
13 member, shall be apportioned among the members in  
14 accordance with the ratio that each member's patronage  
15 during the period bears to total patronage by all  
16 members during the period;

17          (3) The apportionment, distribution, and payment of net  
18 earnings may be paid in cash, credits, written notices  
19 of allocation, or capital stock issued by the worker  
20 cooperative;





- 1 (4) A worker cooperative, in its articles or bylaws, may  
2 establish itself as a capital account cooperative;
- 3 (5) The articles or bylaws of a capital account  
4 cooperative may authorize assignment of a portion of  
5 retained net earnings and net losses to an unallocated  
6 capital account. The unallocated capital account in a  
7 capital account cooperative shall reflect any paid-in  
8 capital and retained net earnings not allocated to  
9 individual members. Earnings assigned to the  
10 unallocated capital account may be used for any and  
11 all corporate purposes, as determined by the board of  
12 directors;
- 13 (6) The system of member and unallocated capital accounts  
14 may be used to determine the redemption price of  
15 member shares, capital stock, and written notices of  
16 allocation. The articles or bylaws may provide for  
17 the capital account cooperative worker cooperative to  
18 pay or credit interest on the balance in each member's  
19 capital account;
- 20 (7) The articles or bylaws of a capital account  
21 cooperative may permit the periodic redemption of



1 written notices of allocation and capital stock and  
2 shall provide for recall and redemption of membership  
3 shares upon termination of membership in the  
4 cooperative; and

5 (8) A collective board worker cooperative shall not be  
6 required to hold an annual meeting of members.

7 **PART III. MEMBERS AND OWNERSHIP**

8 **§ -13 Members.** (a) A cooperative may limit admission  
9 or issue common stock only to persons engaged in the particular  
10 business or using the goods or services provided by or through  
11 the cooperative, including any entity formed under the law of  
12 this State or any other jurisdiction, or may admit as members or  
13 issue common stock to any person meeting uniform terms and  
14 conditions stated in its articles or bylaws.

15 (b) When any required membership fee or payment for stock  
16 as required in the articles, the bylaws, or a resolution of the  
17 board has been paid in full or a promissory note executed for  
18 the required membership fee or capital subscription, a  
19 cooperative may issue a certificate of membership or common  
20 stock evidencing the membership or ownership of the stock or may  
21 evidence the same on the books or other records of the



1 cooperative as determined by the articles, the bylaws, or the  
2 board; provided that for a cooperative formed with stock,  
3 promissory notes of members may not be accepted by the  
4 cooperative as full or partial payment for stock unless  
5 permitted by the bylaws and adequately secured. The cooperative  
6 shall hold the stock as security for the payment of the note,  
7 but retention as security shall not affect the member's right to  
8 vote.

9 (c) No member shall have a right to vote until the  
10 required membership fee or payment for stock has been paid in  
11 full.

12 (d) A cooperative may limit the amount of common stock  
13 that a member may own.

14 (e) No member shall be liable directly or indirectly,  
15 including by way of indemnification, contribution, or otherwise,  
16 under a judgment, decree, or order of a court, or in any other  
17 manner, for a debt, obligation, or liability of or chargeable to  
18 the cooperative while it is incorporated for an amount exceeding  
19 the sum remaining unpaid on the member's membership fee or the  
20 member's subscription to the stock, including any unpaid balance  
21 on any promissory note given in payment thereof; provided that



1 this subsection shall not affect the liability of a member who  
2 is also a member of the board or an officer for that member's  
3 negligence, wrongful act, or misconduct in that capacity.

4 (f) A cooperative formed with or without capital stock  
5 under this chapter may issue or accept investments in nonvoting  
6 stock or equity that may have rights and preferences, including  
7 being subject to per unit retains or allocations of net margins,  
8 as may be provided in the articles, the bylaws, or by the board.  
9 Nonvoting stock or equity may be issued and sold by the  
10 cooperative to any person, including those persons not otherwise  
11 qualified to be members, and may be redeemable or retireable by  
12 the cooperative on terms and conditions as are provided for in  
13 the articles, the bylaws, or a resolution of the board providing  
14 for the issuance of or the investment in the nonvoting stock or  
15 equity. The terms and conditions of redemption shall be printed  
16 on any certificate evidencing the stock or equity.

17 (g) A cooperative shall impose restrictions on the  
18 transfer of voting common stock or membership in the cooperative  
19 in its bylaws and may also impose restrictions in its articles  
20 and on the transfer of other equity investments in the  
21 cooperative in its articles, bylaws, or by resolution of its



1 board. Any restriction shall be printed upon any certificate or  
2 other written evidence of the membership, voting common stock,  
3 or other equity investment if one is issued.

4 (h) A cooperative may, at any time as stated in its  
5 articles, bylaws, or resolution of the board adopted at the time  
6 of issuance, acquire, recall, redeem, exchange, or reissue its  
7 common stock, memberships, preferred stock, preferred equity,  
8 memberships, or other equity capital. Consideration paid for  
9 stock, memberships, or other equity capital acquired, recalled,  
10 redeemed, exchanged, or reissued by the cooperative shall be the  
11 par value, stated value, price originally paid, or book value,  
12 whichever is less, as conclusively determined by the board, plus  
13 any accrued and unpaid dividends, if any, and, if the price  
14 originally paid for the stock, memberships, or other equity  
15 capital included an additional amount based upon the right of  
16 the holder to engage in business with the cooperative, the  
17 consideration shall include the additional amount. If stock,  
18 memberships, or other equity capital acquired, recalled,  
19 redeemed, or exchanged does not have a par value, then the par  
20 value shall not be considered in determining the consideration.  
21 The cooperative may set off against the consideration to be paid



# H.B. NO. 1895

1 obligations to it of the holder of stock, membership, or other  
2 equity capital and shall have a continuing perfected security  
3 interest in the stock, membership, and other equity capital of a  
4 member, stockholder, or holder of other equity capital to secure  
5 payment of any indebtedness to the cooperative of the  
6 stockholder, member, or holder of other equity capital, whenever  
7 indebtedness is incurred. Notwithstanding any other provision  
8 of law, the security interest shall take priority over all other  
9 perfected security interests. No acquisition, recall, or  
10 redemption shall be made if the result would be to bring the  
11 value of the remaining assets of the cooperative below the  
12 aggregate of its indebtedness. The articles or bylaws may  
13 provide other limitations on the right of a cooperative to  
14 acquire recall, redeem, exchange, or reissue its stock  
15 memberships or other equity capital.

16 (i) If a member of a cooperative is other than an  
17 individual, the member may be represented by any individual,  
18 associate, officer, manager, member, shareholder, or other  
19 equity holder thereof duly authorized in writing by the member's  
20 board or other governing body having the right to authorize the  
21 representation.



1           (j) A cooperative may group its members in districts, or  
2 other units, or by types of goods or services used, for  
3 administration or otherwise achieving the purposes of the  
4 cooperative.

5           (k) A cooperative may limit the amount of common stock or  
6 other equity capital held by members or other persons.

7           (l) All worker-members shall have the rights, privileges,  
8 preferences, restrictions, or conditions as provided in the  
9 articles or bylaws. This membership shall not be divided into  
10 partial memberships.

11           (m) A worker cooperative shall only make patronage  
12 distributions to the worker-member class.

13           § -14 **Member meetings.** (a) Each cooperative shall  
14 provide for one or more regular member meetings annually, except  
15 for a collective worker board cooperative. Either the board or  
16 officers designated in the bylaws shall have the right to call a  
17 special meeting of the members at any time, and the president,  
18 or other officer designated in the bylaws, shall call a special  
19 meeting to be held within sixty days upon petition by ten per  
20 cent of the total number of members stating the specific  
21 business to be brought before the meeting; provided that in a



1 worker cooperative with more than four worker-members, a special  
2 meeting may be called by only the greater of three worker-  
3 members or five per cent of the worker-members. In a worker  
4 cooperative with fewer than four worker-members, special  
5 meetings may be called by one worker-member. The board or the  
6 person calling the special meeting shall determine the date,  
7 time, and place of the meeting.

8 (b) Written notice of all member meetings shall be mailed  
9 to each member at that member's last known address or  
10 transmitted to each member in any other manner as may be  
11 provided in the bylaws at least ten days prior to the meeting.  
12 A worker cooperative shall provide notice of the meeting not  
13 less than forty-eight hours before the meeting if the meeting is  
14 a meeting of only worker-members; provided that the notice is  
15 delivered personally to every worker-member. Notice of any  
16 special meeting shall include a statement of the purpose for the  
17 meeting. At all regular meetings of members of the cooperative,  
18 any and all lawful business may be brought before the meeting  
19 regardless of whether stated in the notice of the meeting;  
20 provided that amendments to the articles or the bylaws of the  
21 cooperative or other action required to be stated in the notice





1 of the meeting by this article shall not be subject to action  
2 unless the notice is stated in the notice of the meeting. At  
3 all special meetings of the members of the cooperative, business  
4 brought before the meeting shall be limited to the purpose  
5 stated in the notice.

6 (c) Actions taken or agreed to be taken during a member  
7 meeting shall not be invalidated on account of any member's  
8 failure to receive notice of a meeting if reasonable effort has  
9 been made to give notice in accordance with this section.

10 (d) Lawful actions or other membership votes may be taken  
11 by the cooperative in lieu of or without a member meeting if all  
12 members entitled to act or vote with respect to the action agree  
13 to that action by unanimous written consent.

14 § -15 **Membership list for meeting.** (a) After fixing a  
15 record date for a meeting of the membership, the cooperative  
16 shall prepare a list of the names and addresses of all its  
17 members who are entitled to be given notice of the meeting. The  
18 membership list shall be available for inspection by any member  
19 or member's agent or attorney, for a proper corporate purpose,  
20 beginning the earlier of ten days before the meeting for which  
21 the list was prepared or two business days after notice of the



1 meeting is given and continuing through the meeting, and any  
2 adjournment.

3 (b) The cooperative shall make the membership list  
4 available at the meeting and any member or member's agent or  
5 attorney is entitled to inspect the list at any time and for a  
6 proper corporate purpose during the meeting or any adjournment.

7 (c) If the cooperative refuses to allow a member or the  
8 member's agent or attorney to inspect the membership list before  
9 or at the meeting, the member may apply to the circuit court of  
10 the county in which the street address of the cooperative's  
11 principal office is located or, if the cooperative has no  
12 principal office in this State, to the circuit court of the  
13 county in which the street address of its registered agent is  
14 located or, if the cooperative has no registered agent, to the  
15 first circuit court of the city and county of Honolulu for an  
16 order permitting the member or the member's agent or attorney to  
17 inspect the membership list.

18 (d) The court may order inspection of the membership list  
19 pursuant to subsection (c), unless the cooperative proves that  
20 it refused inspection or copying of the list in good faith  
21 because it had a reasonable basis for doubt about the right of



1 the member or the agent or attorney of the member to inspect or  
2 copy the membership list. The court may also postpone or  
3 adjourn the meeting for which the list was prepared until the  
4 inspection ordered by the court is complete. In any action:

- 5 (1) The court may order the losing party to pay the  
6 prevailing party's reasonable costs, including  
7 reasonable attorney fees;
- 8 (2) The court may order the losing party to pay the  
9 prevailing party for any damages the prevailing party  
10 shall have incurred by reason of the subject matter of  
11 the litigation;
- 12 (3) If inspection or copying is ordered pursuant to  
13 subsection (c), the court may order the cooperative to  
14 pay the member's inspection and copying expenses; and
- 15 (4) The court may grant either party any other remedy  
16 provided by law.
- 17 (e) If a court orders inspection of the membership list  
18 pursuant to subsection (c), the court may impose reasonable  
19 restrictions on the use or distribution of the list by the  
20 member.



1           (f) Failure to prepare or make available the membership  
2 list shall not affect the validity of action taken at the  
3 meeting.

4           § -16 **Quorum.** (a) A quorum for conducting business at  
5 all meetings of the members shall be five per cent of the total  
6 number of members or thirty members present in person at the  
7 meeting, whichever is less. Members present and voting in  
8 person or in any other manner authorized by the cooperative  
9 shall be counted toward the quorum with respect to that matter;  
10 provided that this section shall not be construed to prevent a  
11 cooperative from requiring a greater number of members or  
12 percentage thereof as a quorum.

13           (b) An action by a cooperative shall not be valid in the  
14 absence of a quorum at the meeting at which the action was  
15 taken, unless the action taken is subsequently ratified by the  
16 required number of members.

17           § -17 **Member voting.** (a) Members of a cooperative may  
18 vote either in person or, if provided in the articles or the  
19 bylaws of the cooperative or a resolution of the board with  
20 respect to a particular issue, by any of the following methods:



1           (1) Mail or electronic transmission if a means is provided  
2           to verify that a member so voting has received the  
3           exact wording of the matter upon which the vote is to  
4           be taken;

5           (2) Telecommunication; or

6           (3) Any other means by which all persons in the meeting  
7           may communicate with each other during the meeting.

8           (b) In this chapter, whenever reference is made to voting  
9 by membership, the vote may be taken in any manner established  
10 pursuant to this section unless specifically provided otherwise  
11 in this chapter or by the board with respect to a particular  
12 matter upon which the vote is to be taken.

13           (c) With respect to a matter where a vote has been cast by  
14 an authorized means other than the person being present and  
15 voting in person, the person casting the vote shall be counted  
16 as present and voting for purposes of those provisions in this  
17 chapter that refer to persons "present and voting".

18           (d) Proxy or cumulative voting shall be prohibited;  
19 provided that the articles or bylaws may allow votes on specific  
20 preannounced items by mail or otherwise by members absent from  
21 meetings; provided further that where a member is other than an



1 individual, the member's vote may be cast by a representative  
2 authorized pursuant to this chapter.

3 (e) Except as otherwise provided in subsection (f), each  
4 member of a cooperative formed under this chapter shall be  
5 entitled to one vote only.

6 (f) Community investor voting power in a worker  
7 cooperative shall be provided in the articles or bylaws, and  
8 shall be limited to approval rights only over a merger, sale of  
9 major assets, reorganization, or dissolution. Approval rights  
10 shall not include the right to propose any action.

11 **§ -18 Reserves, distributions, and patronage refunds.**

12 (a) A cooperative shall periodically set aside a portion of net  
13 margins, per unit retains, or other funds that is reasonable as  
14 determined by the board or in accordance with the articles or  
15 bylaws, for reserves, distributions, patronage refunds, capital,  
16 or other lawful business purposes.

17 (b) Net margins, after deductions for reasonable reserves  
18 and for allowances for income tax, shall be calculated and  
19 allocated on a patronage basis at least once every twelve months  
20 to members or to members and other qualified persons on an  
21 equitable basis as determined by the board or in accordance with



# H.B. NO. 1895

1 the articles or bylaws. This section shall not be construed as  
2 prohibiting the retention of net margins, excess per unit  
3 retains, or other funds allocated to members as a means of  
4 providing capital for the cooperative.

5 (c) If a cooperative has retained net margins or other  
6 funds allocated to members, the board shall have the right in  
7 accordance with the articles, bylaws, and policies established  
8 by the board to redeem or retire the net margins or other funds  
9 so retained. All decisions relating to the redemption or  
10 retirement of those funds shall be made solely by the board.

11 (d) A worker cooperative may create an indivisible  
12 reserves account that shall not be distributed to members.  
13 Funds in the indivisible reserves account shall derive only from  
14 non-patronage-sourced income, in a manner provided in the  
15 articles or bylaws, or by the board, and shall be used as  
16 capital for the cooperative.

17 **§ -19 Inspection of cooperative records by member. (a)**

18 A member may inspect and copy, at the member's expense, during  
19 regular business hours at a reasonable location designated by  
20 the cooperative, any corporate records if the member meets the  
21 requirements of subsection (b) and gives the cooperative written



1 demand at least five business days before the date on which the  
2 member wishes to inspect and copy records; provided that no  
3 member shall have the right to inspect or copy any records of  
4 the cooperative relating to the amount of equity capital in the  
5 cooperative held by any person or any accounts receivable or  
6 other amounts due the cooperative from any person.

7 (b) To be entitled to inspect and copy permitted records,  
8 the member shall meet the following requirements:

- 9 (1) The member has been a member for at least one year  
10 immediately preceding the demand to inspect or copy or  
11 is a member holding at least five per cent of all of  
12 the outstanding equity interests in the cooperative as  
13 of the date the demand is made;
- 14 (2) The demand is made in good faith and for a proper  
15 corporate business purpose;
- 16 (3) The member describes with reasonable particularity the  
17 purpose and the records that the member desires to  
18 inspect; and
- 19 (4) The records are directly connected with the described  
20 purpose.





1 (c) The right of inspection granted under this section may  
2 not be abolished or limited by the articles, bylaws, or any  
3 actions of the board or the members.

4 (d) This section shall not affect:

5 (1) The right of a member to inspect records even if the  
6 member is in litigation with the cooperative; or

7 (2) The power of a court to compel the production of the  
8 cooperative's records for examination.

9 (e) If the records of the cooperative to be inspected or  
10 copied are in active use or storage at the time otherwise  
11 provided for inspection or copying, the cooperative shall notify  
12 the member of this fact and shall set a date and hour within  
13 three business days of the date otherwise set in this section  
14 for the inspection or copying.

15 § -20 Scope of member's inspection right. (a) A  
16 member's agent or attorney has the same inspection and copying  
17 rights as the member.

18 (b) The right to copy records includes, if reasonable, the  
19 right to receive copies made by photographic, xerographic  
20 copying, or other means.



1           (c) The cooperative may impose a reasonable charge,  
2 covering the costs of labor and material, for copies of any  
3 documents provided to the member. The charge may not exceed the  
4 estimated cost of production and reproduction of the records.

5           § -21 Court-ordered inspection. (a) If a cooperative  
6 refuses to allow a member, or the member's agent or attorney, to  
7 inspect or copy any records that the member is entitled to  
8 inspect or copy within a prescribed time limit or, if none,  
9 within a reasonable time, the circuit court of the county in  
10 this State in which the street address of the cooperative's  
11 principal office is located or, if the cooperative has no  
12 principal office in this State, the circuit court of the county  
13 in which the street address of its registered agent is located  
14 or, if the cooperative has no registered agent, the first  
15 circuit court of the city and county of Honolulu, on application  
16 of the member, may summarily order the inspection or copying of  
17 the records demanded at the cooperative's expense.

18           (b) If a court orders inspection or copying of the records  
19 demanded, unless the cooperative proves that it refused  
20 inspection or copying in good faith because it had a reasonable



1 basis for doubt about the right of the member or the member's  
2 agent or attorney to inspect or copy the records demanded:

3 (1) The court may order the losing party to pay the  
4 prevailing party's reasonable costs, including  
5 reasonable attorney fees;

6 (2) The court may order the losing party to pay the  
7 prevailing party for any damages that the prevailing  
8 party shall have incurred by reason of the subject  
9 matter of the litigation;

10 (3) If inspection or copying is ordered pursuant to  
11 subsection (a), the court may order the cooperative to  
12 pay the member's inspection and copying expenses; and

13 (4) The court may grant either party any other remedy  
14 provided by law.

15 (c) If a court orders inspection or copying of records  
16 demanded, it may impose reasonable restrictions on the use or  
17 distribution of the records by the demanding member.

18 **PART IV. OFFICERS AND ELECTIONS**

19 **§ -22 Directors; elections; remuneration; vacancy. (a)**

20 The affairs of a cooperative formed under or subject to this  
21 chapter shall be managed by a board of not less than three



1 directors as provided in the articles or bylaws and who are  
2 elected by and from the members of the cooperative or designated  
3 representatives of members who are not individuals. If  
4 authorized by the articles or the bylaws, up to twenty per cent  
5 of the board may consist of directors who are neither members  
6 nor representatives of members. Directors who are not members  
7 of the cooperative or are representatives of members may be  
8 elected by a vote of two-thirds of the cooperative members  
9 present and voting. Nominations for the position of director  
10 shall be conducted in a manner provided in the bylaws or in a  
11 resolution of the board or of the members.

12 (b) The articles or bylaws may provide that the territory  
13 in which the cooperative has members shall be divided into  
14 districts and that the directors shall be elected according to  
15 those districts, either directly or by district delegates  
16 elected by the members in that district; provided that the  
17 articles or bylaws shall specify the number of directors to be  
18 elected by each district and the manner and method of  
19 reapportioning the directors and of redistricting the territory  
20 covered by the cooperative. The bylaws may provide that primary  
21 elections shall be held in each district to elect the directors



1 apportioned to those districts and that the result of all  
2 primary elections shall be ratified at the next regular meeting  
3 of the cooperative or be considered final as to the cooperative.

4 (c) A cooperative may provide a reasonable remuneration  
5 for the time actually spent by its officers and directors in its  
6 service. No director, during the term of the director's office,  
7 shall be a party to a contract for profit with the cooperative  
8 differing in any way from the business relations accorded  
9 members of the cooperative.

10 (d) The articles or bylaws may limit directors from  
11 occupying any position in the cooperative that is subject to a  
12 regular salary or substantially full-time pay. The articles or  
13 bylaws may provide for an executive committee and may allot to  
14 the committee all the functions and powers of the board, subject  
15 to the general direction and control of the board.

16 (e) When a vacancy on the board occurs other than by  
17 expiration of term, the remaining members of the board, even  
18 though not a quorum, by a majority vote, shall fill the  
19 unexpired term, unless the articles or bylaws provide for an  
20 election of directors by district, in which event, unless the  
21 articles or bylaws provide for a different procedure, the board



1 shall immediately call a special meeting of the members in the  
2 district to fill the vacancy.

3       § -23 Officers; titles; election; duties and authority;  
4 removal. (a) The bylaws shall provide for one or more officers  
5 and the titles of those officers. The officers may include a  
6 board chair, one or more vice-chairs, a president, one or more  
7 vice presidents, a secretary, a treasurer, and assistant  
8 officers or other officers. The officers shall be elected by  
9 the board or in any other manner prescribed in the bylaws. At  
10 least one officer shall be an individual at least eighteen years  
11 of age. At least one officer shall be a member of the board.  
12 One individual may simultaneously hold more than one office, but  
13 may not concurrently hold the offices of president and  
14 secretary.

15       (b) The bylaws or board of each cooperative shall  
16 designate one or more officers responsible for preparing and  
17 maintaining the minutes of meetings and all records required to  
18 be kept and for authenticating records.

19       (c) All officers and agents of the cooperative, as between  
20 themselves and the cooperative, shall have the authority and  
21 perform duties in the management of the cooperative as may be



1 provided in the bylaws, or as may be determined by resolution of  
2 the board of directors not inconsistent with federal, state, and  
3 local law, the articles, and the bylaws.

4 (d) Unless otherwise provided in the articles or bylaws,  
5 the board may remove any officer at any time with or without  
6 cause.

7 § -24 Procedures for meetings of the board of directors.

8 (a) The board shall meet at least annually. The board may  
9 establish a time and place for regular board meetings.

10 (b) Special meetings of the board shall require at least  
11 two days' notice of the date, time, and place. Unless otherwise  
12 provided by the articles or bylaws, the purposes of a special  
13 meeting are not required to be stated in the notice of any  
14 special meeting.

15 (c) A director's attendance at a special meeting  
16 constitutes a waiver of the notice requirement for that meeting  
17 unless the director objects to the lack of or method of notice  
18 and does not thereafter participate in the meeting or if notice  
19 of the purpose of the meeting was required but not given and the  
20 director objects to the transaction of business for that purpose



1 and does not thereafter participate in the meeting with respect  
2 to that purpose.

3 (d) A director is deemed to have assented to an action of  
4 the board unless:

5 (1) The director votes against it or abstains and causes  
6 the abstention to be recorded in the minutes of the  
7 meeting;

8 (2) The director objects at the beginning of the meeting  
9 and does not vote for it later;

10 (3) The director causes the director's dissent to be  
11 recorded in the minutes;

12 (4) The director does not attend the meeting at which the  
13 vote is taken; or

14 (5) The director gives notice of the director's objection  
15 in writing to the secretary within twenty-four hours  
16 after the meeting.

17 (e) Unless otherwise provided by the articles or bylaws:

18 (1) The board may permit any or all directors to  
19 participate in a regular or special meeting through  
20 the use of any means of communication by which all



# H.B. NO. 1895

1 directors participating are able to communicate  
2 simultaneously with each other during the meeting;  
3 (2) Actions of the board may be taken without a meeting if  
4 the action is agreed to by all members of the board  
5 and is evidenced by one or more written consents  
6 together signed by all directors and filed with the  
7 corporate records reflecting the action taken; and  
8 (3) Purposes of a special meeting are not required to be  
9 stated in the notice of any special meeting, but at  
10 least two days' notice of the date, time, and place  
11 shall be given.

12 § -25 Removal of director by the membership or the  
13 board. (a) At a meeting called expressly for that purpose, as  
14 well as any other proper purpose, a director may be removed by  
15 the members in the manner provided in this section upon an  
16 affirmative vote of a majority of the members present and voting  
17 in person or in any other manner authorized by the cooperative  
18 or, if removal of a director is by the board, then by a majority  
19 of the members of the board not subject to removal.



1           (b) The board may remove a director who does not meet the  
2 qualifications for board membership stated in the articles and  
3 bylaws of the cooperative.

4           (c) The members may remove one or more directors only for  
5 cause unless the articles or bylaws allow directors to be  
6 removed without cause.

7           (d) Removal of directors by the vote of the members shall  
8 be initiated by written petition signed by at least ten per cent  
9 of the members stating the alleged causes or reasons for  
10 removing the director. No petition shall seek removal of more  
11 than one director.

12           (e) Within ninety days after receipt of a petition meeting  
13 the requirements of subsection (d), the board shall schedule the  
14 removal vote at a regular or special meeting of the membership  
15 upon determination by the board, if necessary, that cause has  
16 been stated. Any determination of cause shall be made by a  
17 majority of the directors not subject to removal petitions. If  
18 more than a majority of the board is subject to removal  
19 petitions, then the matter shall be promptly referred to an  
20 attorney who has been duly licensed to practice law in the State  
21 for at least five years and who has not previously represented



1 the cooperative. The attorney's determination of whether cause  
2 has been stated shall be final for the purpose of whether to  
3 schedule a vote on removal.

4 (f) Any director subject to a removal petition under this  
5 section shall be promptly informed in writing by the board and  
6 shall have the opportunity, in person and by counsel, to be  
7 heard and present evidence at the meeting called for the vote.  
8 The persons seeking removal shall have the same opportunity.

9 § -26 Removal of director by judicial proceeding. (a)

10 A director may be removed by the circuit court of the county in  
11 this State in which the street address of the cooperative's  
12 principal office is located or, if the cooperative has no  
13 principal office in this State, by the circuit court of the  
14 county in which the street address of its registered agent is  
15 located or, if the cooperative has no registered agent, by the  
16 first circuit court of the city and county of Honolulu, in a  
17 proceeding commenced either by the cooperative or by at least  
18 ten per cent of the members, if the court finds that the  
19 director engaged in fraudulent or dishonest conduct or gross  
20 abuse of authority or discretion with respect to the



1 cooperative, and that removal is in the best interests of the  
2 cooperative.

3 (b) If the members commence a proceeding under this  
4 section, they shall make the cooperative a party defendant.

5 (c) A court that removes a director may bar the director  
6 from reelection for a period prescribed by the court.

7 § -27 Indemnification and personal liability of  
8 directors, officers, employees, and agents. (a) Unless limited  
9 in the cooperative's articles, the cooperative shall have the  
10 same powers, rights, and obligations and shall be subject to the  
11 same limitations with respect to indemnification and personal  
12 liability of directors, officers, employees, and agents as apply  
13 to domestic corporations. Cooperative directors, officers,  
14 employees, and agents shall have the same rights as directors,  
15 officers, employees, and agents of domestic corporations. For  
16 purposes of this section, any reference to shareholders having  
17 the right to vote under the laws that apply to domestic profit  
18 corporations shall be construed to refer to members of the  
19 cooperative having the right to vote.

20 (b) The articles may eliminate or limit the liability of a  
21 director of the cooperative to the cooperative or its members



1 for monetary damages for any breach of the duty of care arising  
2 after the date that the articles became effective, including the  
3 effective date of any provision adopted under a prior statute,  
4 except any:

- 5 (1) Acts or omissions in bad faith or that involve  
6 intentional misconduct or a knowing violation of law;
  - 7 (2) Transaction from which the director derived an  
8 improper personal benefit;
  - 9 (3) Unlawful liquidating distributions of assets to  
10 members;
  - 11 (4) Unlawful loans to directors, or unlawful guarantees of  
12 loans to directors;
  - 13 (5) Unlawful dividends;
  - 14 (6) Unlawful stock or other equity repurchases; or
  - 15 (7) Other unlawful distribution that was voted for or  
16 assented to if the director did not act in conformance  
17 with the standard of care applicable to directors.
- 18 (c) Nothing in subsection (b) shall be construed to  
19 eliminate or limit the liability of a director or officer to the  
20 cooperative or its members for monetary damages for any act or



1 omission occurring prior to the date when the provision becomes  
2 effective.

3 (d) A distribution of stock or other equity repurchase  
4 shall be unlawful if it renders the cooperative unable to pay  
5 its debts as they become due in the usual course of business or,  
6 unless the articles permit otherwise, causes the assets to be  
7 less than the liabilities plus the amount necessary to satisfy  
8 the interests of the holders of securities or other equity  
9 capital preferential to those receiving the distribution, if  
10 dissolved at the time of the distribution.

11 (e) No director or officer shall be personally liable for  
12 any tort committed by an employee unless the director or officer  
13 was personally involved.

14 § -28 **Persons to be bonded.** At the discretion of the  
15 board of a cooperative, any officer, employee, or agent handling  
16 funds or negotiable instruments or property of or for the  
17 cooperative may be bonded for the faithful performance of the  
18 person's duties and obligations.



1           PART V.   POWERS AND PURPOSES: APPLICATION OF OTHER LAWS

2           §   -29 Powers. (a) A cooperative organized under this  
3 chapter shall have the power, except as specifically limited by  
4 this chapter or by its own articles or bylaws, to:

- 5           (1) Have perpetual existence and succession by its  
6           domestic entity name unless limited by the articles;
- 7           (2) Sue and be sued and to complain and defend in courts  
8           of law and equity;
- 9           (3) Make and use a common seal, alter the same at its  
10           pleasure, and to use the seal or a facsimile thereof,  
11           including a rubber stamp, by impressing or affixing it  
12           or by reproducing it in any other manner;
- 13           (4) Purchase, receive, lease, and otherwise acquire and to  
14           own, hold, improve, use, and otherwise deal with real  
15           or personal property or any legal or equitable  
16           interest in property, wherever located;
- 17           (5) Sell, convey, mortgage, pledge, lease, exchange, and  
18           otherwise dispose of all or any part of its property;
- 19           (6) Purchase, receive, subscribe for, and otherwise  
20           acquire shares and other interests in, and obligations  
21           of, any other entity, including any other cooperative,



# H.B. NO. 1895

1           and to own, hold, vote, use, sell, mortgage, lend,  
2           pledge, and otherwise dispose of and deal in and with,  
3           the same;

4           (7) Make contracts and guarantees; incur liabilities;  
5           borrow money; issue notes, bonds, and other  
6           obligations, which may be convertible into or include  
7           the option to purchase other securities of the  
8           cooperative; and secure any of its obligations by  
9           mortgage or pledge of any of its property, franchises,  
10          or income;

11          (8) Lend money, invest and reinvest its funds, and receive  
12          and hold real and personal property as security for  
13          repayment;

14          (9) Be a partner, member, associate, trustee, promoter, or  
15          manager of, or to hold any similar position with, any  
16          entity;

17          (10) Conduct its business, locate offices, and exercise the  
18          powers granted under this chapter within or outside  
19          this State;





# H.B. NO. 1895

- 1       (11) Elect directors and officers and appoint employees and  
2             agents of the cooperative, define their duties, fix  
3             their compensation, and lend them money and credit;
- 4       (12) Pay pensions and establish pension plans, pension  
5             trusts, profit sharing plans, share bonus plans, share  
6             options and rights plans, and benefit or incentive  
7             plans for any or all of its current or former  
8             directors, officers, employees, and agents;
- 9       (13) Make payments or donations for the public welfare or  
10            for charitable, scientific, or educational purposes;
- 11       (14) Regulate and limit the right of members to transfer  
12            their memberships, stock, or other equity;
- 13       (15) Make and amend its articles and bylaws for the  
14            management of its affairs and to make provisions in  
15            its articles for the terms and limitations of stock  
16            ownership or membership and for the distribution of  
17            its earnings;
- 18       (16) Indemnify its directors, officers, employees, and  
19            agents to the extent provided or permitted in this  
20            chapter and to eliminate or limit the personal  
21            liability of a director, officers, employees, or



- 1 agents of the cooperative to the extent permitted by  
2 law;
- 3 (17) Establish in its bylaws procedures for the disposition  
4 of funds when declared payable by the cooperative and  
5 unclaimed by the holder three years after notification  
6 has been mailed to the holder's last-known address of  
7 record on the books of the cooperative, which  
8 disposition may consist of transferring the funds to  
9 the general operating account of the cooperative;
- 10 (18) Establish, secure, own, and develop patents,  
11 trademarks, and copyrights;
- 12 (19) Make advance payments and advances to members;
- 13 (20) Act as the agent or representative of any member for  
14 any lawful purpose or in any lawful transaction of the  
15 cooperative;
- 16 (21) Purchase or otherwise acquire and to hold, own, and  
17 exercise all rights of ownership in, and to sell,  
18 transfer, or pledge or guarantee the payment of  
19 dividends or interest on, or the retirement or  
20 redemption of shares of the stock or bonds of any  
21 person engaged in any lawful activity;



# H.B. NO. 1895

- 1       (22) Allocate earnings and pay patronage dividends;
- 2       (23) Use per unit retains;
- 3       (24) Prohibit or place limitations on amounts or rates of
- 4             dividends payable on any class of capital stock or
- 5             other equity investment in the cooperative;
- 6       (25) Engage in any activity in connection with the
- 7             purchase, hiring, or use by its members or other
- 8             patrons of goods, services, products, equipment,
- 9             supplies, utilities, telecommunications, housing, or
- 10            health care;
- 11       (26) Establish amounts for reasonable and necessary
- 12             reserves for bad debts, obsolescence, grain, quality
- 13             and grade, contingent losses, working capital, debt
- 14             retirement, buildings and equipment, and ownership
- 15             retirement and to provide that no member or other
- 16             person entitled to share in the allocation of the
- 17             cooperative's net margins or other funds shall have
- 18             any rights except upon dissolution when the entire
- 19             reserve funds of the cooperative shall be distributed
- 20             in accordance with applicable federal, state, and



- 1 local law and the articles and bylaws of the  
2 cooperative;
- 3 (27) Manufacture, sell, or supply goods, machinery,  
4 equipment, supplies, or services to its members and to  
5 other patrons or persons;
- 6 (28) Adopt a trade name;
- 7 (29) Finance one or more of the activities described in  
8 this section; and
- 9 (30) Perform every other form or type of act that is  
10 necessary or proper for accomplishing any lawful  
11 purpose of the cooperative that is not otherwise  
12 prohibited to it by law or its articles and bylaws or  
13 that is conducive to or expedient for the interest or  
14 benefit of the cooperative.
- 15 (b) In addition to the powers granted in subsection (a), a  
16 cooperative incorporated under this chapter shall have the  
17 following powers:
- 18 (1) To engage in any activity in connection with the  
19 marketing, selling, preserving, raising, harvesting,  
20 drying, processing, manufacturing, canning, packing,  
21 grading, storing, handling, and use of any products,



1 by-products, or services produced or delivered to the  
2 cooperative by its members or other patrons; and

3 (2) To engage in any activity in connection with  
4 agricultural education and research and to represent  
5 its members' interests in legislative and  
6 administrative forums.

7 (c) In addition to the powers specifically authorized in  
8 this chapter, a cooperative shall have all powers, rights, and  
9 privileges granted by the law of this State to domestic  
10 corporations or domestic nonprofit corporations that are not  
11 inconsistent with this chapter.

12 (d) The powers enumerated in this chapter shall vest in  
13 each cooperative in this State formed under this chapter or that  
14 has elected to be subject to this chapter, regardless of whether  
15 reference is made to those powers in its charter or in its  
16 articles.

17 § -30 **Marketing or purchasing contracts.** Cooperatives  
18 that limit membership to agricultural producers may make and  
19 execute marketing or purchasing contracts that require the  
20 members to sell or purchase, for any period of time not over ten  
21 years, all or any specified part of their agricultural products



1 or specified commodities, goods, services, or input supplies  
2 exclusively to or through the cooperative or any facilities used  
3 or to be created by the cooperative. If a producer contracts to  
4 sell to the cooperative, it shall be conclusively presumed that  
5 title to the products passes absolutely and unreservedly, except  
6 for recorded liens, to the cooperative upon delivery or at any  
7 other specified time if expressly and definitely agreed to in  
8 the contract. The contract may provide, among other things,  
9 that the cooperative may sell or resell the products delivered  
10 by its members with or without taking title to the products and  
11 pay over to its members the resale price, after deducting all  
12 necessary selling, overhead, and other costs and expenses,  
13 including interest or dividends on stock, which shall not exceed  
14 eight per cent per annum, and reserves for proper purposes.

15       § -31 Remedies for breach of marketing or purchasing  
16 contract. (a) The bylaws or the marketing or purchasing  
17 contracts of an agricultural cooperative may fix as liquidated  
18 damages specific sums to be paid by a member to the cooperative  
19 upon the breach by the member of any provision of the marketing  
20 or purchasing contract regarding the sale, purchase, receipt, or  
21 delivery or withholding of products or other goods and may



1 further provide that the member will pay all costs, premiums for  
2 bonds, expenses, and fees if any action is brought upon the  
3 contract by the cooperative. All provisions shall be valid and  
4 enforceable in the courts of this State, and clauses providing  
5 for liquidated damages shall be enforceable and shall not be  
6 regarded as penalties.

7 (b) If a member breaches or threatens to breach a  
8 marketing or purchasing contract, the cooperative shall be  
9 entitled to an injunction to prevent the further breach of the  
10 contract and to a decree of specific performance of the  
11 contract. Pending the adjudication of the action and upon  
12 filing a bond and verified complaint showing the breach or  
13 threatened breach, the cooperative shall be entitled to a  
14 temporary restraining order and preliminary injunction against  
15 the member.

16 (c) In any action upon a marketing contract, it shall be  
17 conclusively presumed that a landowner, landlord, or lessor is  
18 able to control the delivery of products or other goods produced  
19 on the landowner's, landlord's, or lessor's land by tenants or  
20 others whose tenancy or possession or work on the land or the  
21 terms of whose tenancy or possession or labor on the land was



1 created or changed after execution by the landowner, landlord,  
2 or lessor of the marketing contract. The remedies provided in  
3 this section for nondelivery or breach shall lie and be  
4 enforceable against the landowner, landlord, or lessor in any  
5 action upon a marketing contract.

6       § -32 **Inducing breach of marketing or purchasing**  
7 **contract.** Any person who knowingly induces any member of an  
8 agricultural cooperative formed under this chapter, or under  
9 similar statutes of another jurisdiction with similar  
10 restrictions and rights and operating in this State, to break  
11 the member's marketing or purchasing contract or agreement with  
12 the cooperative shall be subject to all available civil remedies  
13 including injunctive relief.

14       § -33 **Purchases of property or other interests.** If a  
15 cooperative with preferred stock or preferred equity purchases  
16 or otherwise acquires any interest in any property, stock, or  
17 interest in another entity, it may, with the consent of the  
18 person or persons from whom the property or interests are being  
19 acquired, discharge the obligations incurred in the purchase or  
20 other acquisition, wholly or in part, by exchanging for the  
21 acquired property, stock, or interest shares or amounts of its





1 preferred stock or preferred equity an amount that, at par or  
2 stated value, would equal the value of the property, stock, or  
3 interest so purchased, as determined by the board. A transfer  
4 to the cooperative of the property, stock, or interest purchased  
5 or otherwise acquired shall be equivalent to payment in cash for  
6 the shares or amounts of preferred stock or preferred equity  
7 issued by the cooperative.

8       §   -34 Warehouse receipts; interest in warehouse  
9 entities. If a cooperative formed under or that has elected to  
10 be subject to this chapter organizes, forms, operates, owns,  
11 controls, has an interest in, owns stock of, or is a member of  
12 any commodities warehouse, the warehouse may issue legal  
13 warehouse receipts to the cooperative against the commodities  
14 delivered by it or to any other person, and any legal warehouse  
15 receipt shall be considered as adequate collateral to the extent  
16 of the usual and current value of the commodity represented by  
17 the receipt. If the warehouse is licensed or licensed and  
18 bonded under the law of this State, any other state, or the  
19 United States, its warehouse receipt delivered to the  
20 cooperative on commodities of the cooperative or its members or  
21 delivered by the cooperative or its members shall not be



1 challenged or discriminated against because of ownership or  
2 control, wholly or in part, by the cooperative.

3       §   -35   **Application of other law.**   (a)   If a matter is not  
4 addressed in this chapter, then chapter 414 shall apply to the  
5 cooperatives formed under or subject to this chapter; provided  
6 that a cooperative may elect to have chapter 414D or chapter  
7 420D apply to it if the cooperative makes the election in its  
8 articles or by a resolution of its members that is delivered to  
9 the director of commerce and consumer affairs for filing that  
10 states that the cooperative elects to have chapter 414D or  
11 chapter 420D apply to it.   A cooperative may revoke the election  
12 by amending its articles or by delivering to the director of  
13 commerce and consumer affairs a statement of change that states  
14 that the cooperative revokes its election to have chapter 414D  
15 or chapter 420D apply to it and that the revocation of the  
16 election has been approved by resolution of its members.

17       (b)   Any exemptions under any existing law applying to  
18 goods or agricultural products in the possession or under the  
19 control of an individual producer shall apply similarly and  
20 completely to the goods or products when delivered by its



1 members to, and in the possession or under the control of, the  
2 cooperative.

3       §   -36   **Cooperatives not in restraint of trade.**  No  
4 cooperative formed under or subject to this chapter shall solely  
5 by its organization and existence be deemed to be a conspiracy  
6 or a combination in restraint of trade, an illegal monopoly, or  
7 an attempt to lessen competition or to fix prices arbitrarily,  
8 nor shall the marketing or purchasing contracts and agreements  
9 between any cooperative and its members or any agreements  
10 authorized under this chapter be considered illegal, in unlawful  
11 restraint of trade, or as part of a conspiracy or combination to  
12 accomplish an improper or illegal purpose.

13       §   -37   **Exemption from securities laws.**  Any security,  
14 patronage refund, per unit retain certificate, capital credit,  
15 evidence of membership, preferred equity certificate, or other  
16 equity instrument issued, sold, or reported by a cooperative as  
17 an investment in its stock or capital to the patrons of a  
18 cooperative formed under or subject to this chapter or a similar  
19 law of any other jurisdiction and authorized to transact  
20 business or conduct activities in this State shall be exempt  
21 from chapter 485A.  Securities, patronage refunds, per unit







1 specified in the articles of incorporation or bylaws of the  
2 cooperative:

- 3 (1) Patronage;
- 4 (2) Capital contributions; and
- 5 (3) A combination of patronage and capital contributions.

6 (b) A worker cooperative is authorized to include  
7 patronage provided by past and current members in its  
8 distribution of the unallocated capital account.

9 (c) Subsection (a) shall not apply to any amounts in the  
10 indivisible reserve account. Any amount in the indivisible  
11 reserve account, upon dissolution, shall be allocated to a  
12 cooperative development organization designated in the articles  
13 of incorporation or the bylaws.

14 § -42 Grounds for judicial dissolution. (a) A  
15 cooperative may be dissolved in a proceeding brought in court by  
16 the attorney general if it is established that:

- 17 (1) The cooperative obtained its organization through  
18 fraud; or
- 19 (2) The cooperative has exceeded or abused the authority  
20 conferred upon it by law.



1 (b) A cooperative may be dissolved in a proceeding brought  
2 in court by not less than ten per cent of the total number of  
3 members if it is established that:

4 (1) The directors are deadlocked in the management of the  
5 cooperative's affairs, the members are unable to break  
6 the deadlock, and irreparable injury to the  
7 cooperative is threatened or suffered; or the business  
8 and affairs of the cooperative can no longer be  
9 conducted to the advantage of the members generally;

10 (2) The directors or those in control of the cooperative  
11 have acted, are acting, or will act in a manner that  
12 is illegal, oppressive, or fraudulent; or

13 (3) The members are deadlocked in voting power and have  
14 failed for a period that includes at least two  
15 consecutive annual meeting dates to elect successors  
16 to directors whose terms have expired or would have  
17 expired upon the election of their successors.

18 (c) A cooperative may be dissolved in a proceeding brought  
19 in court by a creditor if it is established that:



- 1           (1) A creditor's claim has been reduced to judgment, the
- 2                   execution on the judgment has been returned
- 3                   unsatisfied, and the cooperative is insolvent; or
- 4           (2) The cooperative is insolvent and the cooperative has
- 5                   admitted in writing that a creditor's claim is due and
- 6                   owing.

7           § -43 Procedure for judicial dissolution. (a) A

8 proceeding to dissolve a cooperative brought by the attorney

9 general shall be brought in the circuit court of the county in

10 this State in which the street address of the cooperative's

11 principal office is located or, if the cooperative has no

12 principal office in this State, in the circuit court of the

13 county in which the street address of its registered agent is

14 located or, if the cooperative has no registered agent, in the

15 first circuit court of the city and county of Honolulu.

16           (b) A court in a proceeding brought to dissolve a

17 cooperative may issue injunctions, appoint a receiver or

18 custodian pendente lite with all powers and duties the court

19 directs, take other action required to preserve the

20 cooperative's assets, wherever located, and carry on the

21 business of the cooperative until a full hearing can be held.





1           §   -44   **Receivership or custodianship.** (a) A court in a  
2 proceeding to dissolve a cooperative may appoint one or more  
3 receivers to wind up and liquidate, or one or more custodians to  
4 manage the business and affairs, of the cooperative. The court  
5 shall hold a hearing, after giving notice to all parties to the  
6 proceeding and any interested persons designated by the court,  
7 before appointing a receiver or custodian pursuant to this  
8 section. The court appointing a receiver or custodian has  
9 exclusive jurisdiction over the cooperative and all of its  
10 property, wherever located.

11           (b) The court may appoint an individual, a domestic  
12 entity, or a foreign entity or other entity authorized to  
13 transact business or conduct activities in this State as a  
14 receiver or custodian. The court may require the receiver or  
15 custodian to post bond, with or without sureties, in an amount  
16 the court directs.

17           (c) The court shall describe the powers and duties of the  
18 receiver or custodian in its appointing order, which may be  
19 amended from time to time. Among other powers, the receiver  
20 may:



1           (1) Dispose of all or any part of the property of the  
2                   cooperative, wherever located, at a public or private  
3                   sale, if authorized by the court; and

4           (2) Sue and defend in the receiver's own name as receiver  
5                   of the cooperative in all courts.

6           (d) The custodian may exercise all of the powers of the  
7 cooperative, through or in place of its board or officers, to  
8 the extent necessary to manage the affairs of the cooperative in  
9 the best interests of its members and creditors.

10          (e) The court, during a receivership, may redesignate the  
11 receiver as custodian, and during a custodianship may  
12 redesignate the custodian as receiver if doing so is in the best  
13 interests of the cooperative and its members and creditors.

14          (f) The court from time to time during the receivership or  
15 custodianship may order compensation paid and expense  
16 disbursements or reimbursements made to the receiver or  
17 custodian and the person's counsel from the assets of the  
18 cooperative or proceeds from the sale of the assets.

19          § -45 Decree of dissolution. (a) If, after a hearing,  
20 the court determines that one or more grounds for judicial  
21 dissolution exist, it may enter a decree dissolving the



1 cooperative and stating the effective date of the dissolution,  
2 and the clerk of the court shall deliver a certified copy of the  
3 decree to the director of commerce and consumer affairs.

4 (b) After entering the decree of dissolution, the court  
5 shall direct the winding up and liquidation of the cooperative's  
6 business and activities and the giving of notice to the  
7 cooperative's registered agent, or to the director of commerce  
8 and consumer affairs if it has no registered agent.

9 PART VIII. FOREIGN COOPERATIVES

10 § -46 Authority to transact business or conduct  
11 activities required. This chapter shall apply to foreign  
12 cooperatives.

13 PART IX. TRANSITION PROVISIONS

14 § -47 Application to existing cooperatives. An existing  
15 cooperative may elect to be governed by this chapter by  
16 complying with this chapter."

17 SECTION 2. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY: Richard King

Nicole E. Lowen

Hakushima

Long M. Hall

[Signature]

Or Caldwell

Dave Carnes

Amy Carnes

JAN 17 2020



# H.B. NO. 1895

**Report Title:**

Agriculture; General Cooperatives

**Description:**

Authorizes agricultural entities to incorporate as general cooperatives.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

