

SENATE BILL 246

Introduced by Halligan, et al.

1/26	Introduced
1/26	Referred to Business & Industry
1/30	Hearing
	Died in Committee

1 Montana BILL NO. 246
2 INTRODUCED BY Johnny Hager Bradley
3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
6 CREATION OF EMPLOYEE COOPERATIVE CORPORATIONS; PROVIDING FOR
7 QUALIFICATIONS AND RIGHTS OF MEMBERS, DISTRIBUTION OF
8 EARNINGS AND LOSSES, AND ESTABLISHMENT OF CAPITAL ACCOUNTS;
9 AND PROVIDING AN EFFECTIVE DATE."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. [This act] may
13 be cited as the "Employee Cooperative Corporations Act".

14 NEW SECTION. Section 2. Definitions. As used in [this
15 act], unless the context requires otherwise, the following
16 definitions apply:

17 (1) "Employee cooperative" means a corporation that
18 has elected to be governed by the provisions of [this act].

19 (2) "Member" means a natural person who has been
20 accepted for membership in and owns a membership share
21 issued by an employee cooperative.

22 (3) "Patronage" means the amount of work performed as
23 a member of an employee cooperative corporation, measured in
24 accordance with the bylaws of the corporation.

25 (4) "Written notice of allocation" means a written

1 instrument that discloses to a member the stated dollar
2 amount of the member's patronage allocation and the terms
3 for payment of that amount to the member by the employee
4 cooperative.

5 NEW SECTION. Section 3. Election to become an
6 employee cooperative corporation. (1) A corporation
7 organized under Title 35, chapter 1, may elect to become an
8 employee cooperative under the provisions of [this act] by
9 so stating in its articles of incorporation or in amendments
10 to its articles of incorporation filed in accordance with
11 Title 35, chapter 1.

12 (2) Except as otherwise provided in [this act], a
13 corporation making the election allowed under subsection (1)
14 is subject to all the provisions of Title 35, chapter 1.

15 NEW SECTION. Section 4. Revocation of election. An
16 employee cooperative may revoke its election under the
17 provisions of [section 3] by a vote of two-thirds of its
18 members and through amendment to its articles of
19 incorporation filed in accordance with Title 35, chapter 1.

20 NEW SECTION. Section 5. Corporate name. An employee
21 cooperative may include the word "cooperative" or "co-op" in
22 its corporate name.

23 NEW SECTION. Section 6. Members -- membership fees --
24 redemption price of shares -- rights and responsibilities.
25 (1) The bylaws of an employee cooperative must establish

1 qualifications for membership and the method of acceptance
2 and termination of memberships. A person may not be accepted
3 as a member unless employed by the employee cooperative on a
4 full-time or part-time basis.

5 (2) An employee cooperative shall issue a class of
6 voting shares designated as membership shares. Each member
7 may own one membership share, and only a member may own a
8 membership share.

9 (3) The directors of the employee cooperative shall
10 determine the fee to be charged for issuance of membership
11 shares. The redemption price of membership shares must be
12 determined by reference to internal capital accounts
13 described in [section 9].

14 (4) Except as otherwise provided in [this act],
15 members of an employee cooperative have all the rights and
16 responsibilities of shareholders of a corporation organized
17 under Title 35, chapter 1.

18 NEW SECTION. Section 7. Voting powers -- bylaws --
19 amendment of articles of incorporation. (1) Except as
20 otherwise provided in [this act] or in the articles of
21 incorporation of an employee cooperative, no capital share
22 other than a membership share has voting power in an
23 employee cooperative.

24 (2) The power to amend or repeal bylaws of an employee
25 cooperative is vested in the members only, except to the

1 extent that the directors are authorized to amend or repeal
2 the bylaws.

3 (3) Voting on amendments to the articles of
4 incorporation of an employee cooperative is limited to the
5 members, except that an amendment adversely affecting the
6 rights of shareholders may not be adopted without the vote
7 of the shareholders.

8 NEW SECTION. Section 8. Apportionment, distribution,
9 and payment of net earnings or losses. (1) The net earnings
10 or losses of an employee cooperative must be apportioned and
11 distributed at times and in the manner that the articles of
12 incorporation or bylaws specify. Net earnings or losses
13 declared as patronage allocations with respect to a period
14 of time and paid or credited to members must be apportioned
15 among the members in the ratio that each member's patronage
16 during the period involved bears to the total patronage by
17 all members during that period.

18 (2) The apportionment, distribution, and payment of
19 net earnings required by subsection (1) may be in cash,
20 credits, written notices of allocation, or capital shares
21 issued by the employee cooperative.

22 NEW SECTION. Section 9. Internal capital accounts --
23 recall or redemption of shares -- interest -- collective
24 reserve account. (1) An employee cooperative may establish
25 through its bylaws a system of internal capital accounts to

1 reflect the book value and to determine the redemption price
2 of membership shares, capital shares, and written notices of
3 allocation.

4 (2) (a) The bylaws of an employee cooperative:

5 (i) may permit the periodic redemption of written
6 notices of allocation and capital shares;

7 (ii) must provide for recall and redemption of written
8 notices of allocation and capital shares; and

9 (iii) must provide for recall and redemption of the
10 membership share upon termination of membership in the
11 cooperative.

12 (b) A redemption may not be made that would result in
13 the liability of any director or officer of the employee
14 cooperative.

15 (3) The articles of incorporation or bylaws may
16 provide for the employee cooperative to pay or credit
17 interest on the balance of each member's internal capital
18 account.

19 (4) The articles of incorporation or bylaws may
20 authorize assignment of a portion of retained net earnings
21 and net losses to a collective reserve account. Earnings
22 assigned to the collective reserve account may be used for
23 any corporate purpose determined by the board of directors.

24 NEW SECTION. Section 10. Internal capital account
25 cooperatives. (1) An internal capital account cooperative is

1 an employee cooperative:

2 (a) in which the entire net book value is reflected
3 in:

4 (i) internal capital accounts of which each member has
5 one account; and

6 (ii) a collective reserve account;

7 (b) in which no person other than a member owns
8 capital shares; and

9 (c) in which each member has one vote in any matter
10 requiring voting by shareholders.

11 (2) In an internal capital account cooperative:

12 (a) the internal capital account for a member must:

13 (i) show the credit of the member for the paid-in
14 membership fee and additional paid-in capital of the member;
15 and

16 (ii) record the apportionment of retained net earnings
17 or net losses to the member in accordance with patronage by
18 appropriately crediting or debiting the internal capital
19 account of the member;

20 (b) the collective reserve account must reflect any:

21 (i) paid-in capital;

22 (ii) net losses; and

23 (iii) retained net earnings not allocated to individual
24 members; and

25 (c) the balance in each internal capital account and

1 collective reserve account, if any, must be adjusted at the
2 end of each accounting period so that the sum of the
3 balances is equal to the net book value of the employee
4 cooperative.

5 NEW SECTION. **Section 11.** Conversion of membership
6 shares and internal capital accounts upon revocation of
7 election -- consolidation or merger. (1) If an employee
8 cooperative revokes its election according to [section 4],
9 the amendment to the articles of incorporation shall provide
10 for conversion of membership shares and internal capital
11 accounts to securities or other property in a manner
12 consistent with Title 35, chapter 1.

13 (2) A corporation that has elected to become an
14 employee cooperative corporation under [section 3] and that
15 has not revoked that election according to [section 4] may
16 not consolidate or merge with another corporation except an
17 employee cooperative. Two or more employee cooperatives may
18 consolidate or merge in accordance with Title 35, chapter 1.

19 NEW SECTION. **Section 12.** Effective date. [This act]
20 is effective July 1, 1989.

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