

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

SUMMARY: Renames the Consumer Cooperative Corporation Law to the General Cooperative Corporation Law. Specifically, **this bill:**

- 1) Defines "worker cooperative" or "employment cooperative" as a corporation formed that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes.
- 2) Requires at least 51% of the workers shall be worker-members or eligible for membership within 2 years of becoming a worker.
- 3) Authorizes a worker cooperative to suspend a worker-member without prior notice if the worker-member is given notice and the opportunity to be heard or to provide a written response within 5 days after the suspension.
- 4) Authorizes a worker cooperative to apportion and distribute its net earnings and losses at the time and in the manner specified in the articles of incorporation or bylaws.
- 5) Requires a worker cooperative to only make patronage distributions to the worker-member class.
- 6) Defines the patrons of a worker cooperative as worker-members and authorizes their patronage to be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combinations of these measures.
- 7) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to the members.
 - a) Funds in the indivisible reserves account can be used as capital for the worker cooperative.
- 8) Allows a worker cooperative to call a special meeting with 20% or more of the worker-members.
- 9) Defines a "capital account cooperative" as a worker cooperative in which the entire net book value is reflected in member capital accounts, one for each member and an unallocated capital account, if any.

- 10) Defines a "collective board worker cooperative" as a worker cooperative in which there is only one class of members consisting of worker-members, all of whom are members of the board.
 - a) The collective board worker cooperative is not required to hold an annual meeting of the members.
- 11) Defines "worker-member" as a member who is a natural person and also a patron of a worker cooperative.
- 12) Defines "non-worker-member" as a member of a worker cooperative who is not a worker member.
- 13) Provides non-worker-member voting power in a worker cooperative shall be provided in the articles or bylaws and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
- 14) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to members. Funds in the indivisible reserves account shall, in a manner provided in the articles or bylaws, or by the board, be used as capital for the cooperative.
- 15) Provides that a worker cooperative that has not revoked its election to be governed as a worker cooperative shall not consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may merge or consolidate in a manner consistent with this chapter.
- 16) Requires a worker cooperative to provide notice of a meeting not less than 48 hours before the meeting if the meeting involves only worker-members.
- 17) Exempts a membership or share interest in a collective board worker cooperative from the definition of security.
- 18) Increases the investment limitation for Consumer Cooperatives under California's Corporate Securities Law of 1968 exemption from qualification from \$300 to \$1,000.
- 19) Excludes shares or memberships issued by worker cooperative from qualification, provided that the aggregate investment of any shareholder or member does not exceed \$5,000.
- 20) Makes finding and declarations.

EXISTING LAW:

- 1) Establishes the Consumer Cooperative Cooperation Law which allows corporations to form as a cooperative corporation. (Corporations Code, Section 12200 et seq.)
- 2) Provides that it is unlawful for any person to offer or sell any security in this state, unless such offering or sale has been qualified by the commissioner, as specified, or unless the offering or sale is covered by an express exemption. Caps the maximum aggregate investment that may be made by a shareholder in shares or by a member in memberships in a consumer cooperative corporation. As long as this cap is not exceeded, sales of those shares

or memberships are exempt from state securities permitting laws. The cap of \$300 was placed in California law, effective January 1, 1984. (Corporations Code, Section 25110)

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

"A worker cooperative has the purpose of creating and maintaining sustainable jobs and generating wealth in order to improve the quality of life of its worker-members, dignify human work, allow workers' democratic self-management, and promote community and local development.

The purpose of this act is to amend the Consumer Cooperative Corporation Law to clarify that the law applies to cooperatives in general, not just consumer cooperatives, and to create more visibility for worker cooperatives. This act is intended to provide a definition of worker cooperative for purposes of this act, and not for purposes of other laws."

Cooperatives:

AB 816 makes substantive and historical changes to the California Consumer Cooperative Corporation Law. The Legislature, in 1982 created the Consumer Cooperative Law which provides a framework for establishing and operating cooperatives. California cooperatives can trace their history back to 1844, when a group of cotton mill weavers in England organized, called themselves the Rochdale Society. The Rochdale Society adopted several principles that have become the basis of most cooperatives. These principles include: open membership; one member, one vote; cash-only trading at market prices; patronage refunds proportional to each member's use of the cooperative's services; and limited return of interest on contributed capital.

Cooperatives are enterprises in which individuals or businesses organize to furnish themselves services that the members need. They seek to provide services more efficiently and at lower cost compared to paying third parties or to each member's performing the service individually.

Unlike corporations, in cooperatives, ownership and control are equal among members. Cooperatives operate according to the democratic principle of one member, one vote. Unlike business corporations, cooperatives do not seek to generate profit but rather seek to save money for their members. Similarly, members do not seek or obtain increased capital value but rather cost savings and efficiency. In contrast to stock in a corporation, membership in a cooperative is not a saleable commodity. Cooperatives exist in many forms such as agricultural, financial institutions, housing, utility, consumer to name a few.

Cooperatives generally share the following principles:

- Democratic Governance - Cooperatives generally have a one member, one vote rule. This is different from traditional business models, which often weight each owner's vote by the amount of that person's stake in the business. However, some cooperatives have an elected board of directors to oversee the day-to-day operations of the business, leaving strategic decisions to members as a whole.

- **Consensus Building** – While each member has one vote, cooperatives encourage members to work with one another in their decision-making progress. If members want the cooperative to take a certain action, they must collaborate and gather most, if not, all members to agree.
- **Community-Centric** – Most cooperatives have members from the same area. Because members live where they work, they are more likely to invest there. As cooperatives become a significant part of a community, they have less incentive to leave.
- **Member Satisfaction Superior to Capital** – Cooperatives must earn a profit in order to survive as a business. However, member wellbeing is valued above earning more money. Many cooperatives have rules that keep the workplace fair, and preserve the workers’ due process rights and safety.
- **Self-Determination** - Members are more likely to invest their time and energy in the cooperative because they have input in its decisions and would share any wealth that comes from it. While traditional business models limit decision-making to its senior leadership, cooperatives give each member a stake in its future.
- **Training** – Cooperatives usually have an apprenticeship program or other training that prepares new members to participate in the business. For cooperatives to survive, they must recruit, train, and continually develop their members.
- **Open Membership** – Cooperatives generally allow any person to join regardless of gender, race, religion, political, or social status. To become a member, many cooperatives require an entry-level training program, an initial capital investment, and final approval by the membership.

Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

Patronage	If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.	If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.
Capital Account Cooperative	N/A	Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.
Voting Power	Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.	Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
Member Meeting Notification	Requires written notification at least 10 days in advance of a meeting	Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.
Expelling or suspending members	Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.	Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.
Merger	N/A	Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

The US Federation of Worker Cooperatives determines whether a cooperative is a worker cooperative based on basic standards for worker cooperatives established in the World Declaration on Cooperative Worker Ownership (also known as the Oslo Declaration) at a meeting in Oslo, Norway in 2003 of the International Organization of Industrial, Artisanal and Service Producers' Cooperatives (CICOPA).

Almost any business can be organized as a worker cooperative. Examples include restaurants, bakeries and retail stores. Some well-known worker cooperatives are Equal Exchange headquartered in Massachusetts, a fair trade importer of chocolate and coffee and MONDRAGON Corporation located in Spain, one of the world's largest worker cooperatives that employs over 80,000 workers.

Other States:

Eleven other states have enacted worker cooperative specific statutes. These states include: Alabama, Connecticut, Delaware, Maine, Massachusetts, Oregon, Vermont, New York, Washington, Pennsylvania and Colorado.

Related Legislation:

SB 577 (Hueso) Authorizes three new securities permitting exemptions, as specified, and increases, from \$300 to \$1,000, the maximum allowable aggregate investment of any shareholder in shares of a consumer cooperative corporation or member in memberships of a consumer cooperative corporation. Pending in Senate Judiciary Committee.

Previous Legislation:

AB 1161 (Skinner) 2011 Legislative Year. This measure would have renamed the Cooperative Corporation Law, as well as, make other significant changes. Died in the Assembly Banking and Finance Committee.

AB 2525 (Bonta) 2014 Legislation Year. This bill would have created a special purpose limited liability company. Died in the Assembly Banking and Finance Committee.

Amendments:

A number of amendments are recommended below in order to maintain some consistency through the cooperative law. Some of the amendments are technical while others provide clarification of the author's intent.

- 1) On page 3, line 7, add after development "in this state."
- 2) On page 5, line 20, insert "Worker" is a natural person contributing labor or services."
- 3) On page 5, line 20, insert, "Candidate" means a worker who is being considered for membership, as defined in the corporation's articles or bylaws.
- 4) On page 6, line 33, delete "eligible" and insert "candidates"
- 5) On page 10, delete lines 12-17
- 6) On page 12, delete lines 28 & 29 and insert "in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of 3 worker-members or 5% of the worker-members. For a worker cooperative with fewer than 4 members, special meetings may be called by 5% of the worker-members."
- 7) On page 13, on line 24, add after members, insert, "provided that such notice is delivered personally."
- 8) On page 18, delete lines 1-6 and insert, "Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws."

- 9) On page 21, line 9, delete "Financial Institutions" and insert "Business Oversight"
- 10) On page 21, line 17, delete "which" and insert "that"
- 11) On page 21, line 33, delete "Financial Institutions" and insert "Business Oversight"
- 12) Take out Sections 26 & 27 in the measure
- 13) On page 28, line 20, delete "In the case of a worker"
- 14) On page 28, delete lines 21-25
- 15) On page 28, line 26, delete "be qualified or filed as a sale of securities under this title."

REGISTERED SUPPORT / OPPOSITION:

Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

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FISCAL EFFECT: Unknown.

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Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
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Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

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- 6) On page 12, delete lines 28 & 29 and insert "in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of 3 worker-members or 5% of the worker-members. For a worker cooperative with fewer than 4 members, special meetings may be called by 5% of the worker-members."
- 7) On page 13, on line 24, add after members, insert, "provided that such notice is delivered personally."
- 8) On page 18, delete lines 1-6 and insert, "Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws."

- 9) On page 21, line 9, delete "Financial Institutions" and insert "Business Oversight"
- 10) On page 21, line 17, delete "which" and insert "that"
- 11) On page 21, line 33, delete "Financial Institutions" and insert "Business Oversight"
- 12) Take out Sections 26 & 27 in the measure
- 13) On page 28, line 20, delete "In the case of a worker"
- 14) On page 28, delete lines 21-25
- 15) On page 28, line 26, delete "be qualified or filed as a sale of securities under this title."

REGISTERED SUPPORT / OPPOSITION:

Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

SUMMARY: Renames the Consumer Cooperative Corporation Law to the General Cooperative Corporation Law. Specifically, **this bill:**

- 1) Defines "worker cooperative" or "employment cooperative" as a corporation formed that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes.
- 2) Requires at least 51% of the workers shall be worker-members or eligible for membership within 2 years of becoming a worker.
- 3) Authorizes a worker cooperative to suspend a worker-member without prior notice if the worker-member is given notice and the opportunity to be heard or to provide a written response within 5 days after the suspension.
- 4) Authorizes a worker cooperative to apportion and distribute its net earnings and losses at the time and in the manner specified in the articles of incorporation or bylaws.
- 5) Requires a worker cooperative to only make patronage distributions to the worker-member class.
- 6) Defines the patrons of a worker cooperative as worker-members and authorizes their patronage to be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combinations of these measures.
- 7) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to the members.
 - a) Funds in the indivisible reserves account can be used as capital for the worker cooperative.
- 8) Allows a worker cooperative to call a special meeting with 20% or more of the worker-members.
- 9) Defines a "capital account cooperative" as a worker cooperative in which the entire net book value is reflected in member capital accounts, one for each member and an unallocated capital account, if any.

- 10) Defines a "collective board worker cooperative" as a worker cooperative in which there is only one class of members consisting of worker-members, all of whom are members of the board.
 - a) The collective board worker cooperative is not required to hold an annual meeting of the members.
- 11) Defines "worker-member" as a member who is a natural person and also a patron of a worker cooperative.
- 12) Defines "non-worker-member" as a member of a worker cooperative who is not a worker member.
- 13) Provides non-worker-member voting power in a worker cooperative shall be provided in the articles or bylaws and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
- 14) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to members. Funds in the indivisible reserves account shall, in a manner provided in the articles or bylaws, or by the board, be used as capital for the cooperative.
- 15) Provides that a worker cooperative that has not revoked its election to be governed as a worker cooperative shall not consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may merge or consolidate in a manner consistent with this chapter.
- 16) Requires a worker cooperative to provide notice of a meeting not less than 48 hours before the meeting if the meeting involves only worker-members.
- 17) Exempts a membership or share interest in a collective board worker cooperative from the definition of security.
- 18) Increases the investment limitation for Consumer Cooperatives under California's Corporate Securities Law of 1968 exemption from qualification from \$300 to \$1,000.
- 19) Excludes shares or memberships issued by worker cooperative from qualification, provided that the aggregate investment of any shareholder or member does not exceed \$5,000.
- 20) Makes finding and declarations.

EXISTING LAW:

- 1) Establishes the Consumer Cooperative Cooperation Law which allows corporations to form as a cooperative corporation. (Corporations Code, Section 12200 et seq.)
- 2) Provides that it is unlawful for any person to offer or sell any security in this state, unless such offering or sale has been qualified by the commissioner, as specified, or unless the offering or sale is covered by an express exemption. Caps the maximum aggregate investment that may be made by a shareholder in shares or by a member in memberships in a consumer cooperative corporation. As long as this cap is not exceeded, sales of those shares

or memberships are exempt from state securities permitting laws. The cap of \$300 was placed in California law, effective January 1, 1984. (Corporations Code, Section 25110)

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

"A worker cooperative has the purpose of creating and maintaining sustainable jobs and generating wealth in order to improve the quality of life of its worker-members, dignify human work, allow workers' democratic self-management, and promote community and local development.

The purpose of this act is to amend the Consumer Cooperative Corporation Law to clarify that the law applies to cooperatives in general, not just consumer cooperatives, and to create more visibility for worker cooperatives. This act is intended to provide a definition of worker cooperative for purposes of this act, and not for purposes of other laws."

Cooperatives:

AB 816 makes substantive and historical changes to the California Consumer Cooperative Corporation Law. The Legislature, in 1982 created the Consumer Cooperative Law which provides a framework for establishing and operating cooperatives. California cooperatives can trace their history back to 1844, when a group of cotton mill weavers in England organized, called themselves the Rochdale Society. The Rochdale Society adopted several principles that have become the basis of most cooperatives. These principles include: open membership; one member, one vote; cash-only trading at market prices; patronage refunds proportional to each member's use of the cooperative's services; and limited return of interest on contributed capital.

Cooperatives are enterprises in which individuals or businesses organize to furnish themselves services that the members need. They seek to provide services more efficiently and at lower cost compared to paying third parties or to each member's performing the service individually. Unlike corporations, in cooperatives, ownership and control are equal among members. Cooperatives operate according to the democratic principle of one member, one vote. Unlike business corporations, cooperatives do not seek to generate profit but rather seek to save money for their members. Similarly, members do not seek or obtain increased capital value but rather cost savings and efficiency. In contrast to stock in a corporation, membership in a cooperative is not a saleable commodity. Cooperatives exist in many forms such as agricultural, financial institutions, housing, utility, consumer to name a few.

Cooperatives generally share the following principles:

- Democratic Governance - Cooperatives generally have a one member, one vote rule. This is different from traditional business models, which often weight each owner's vote by the amount of that person's stake in the business. However, some cooperatives have an elected board of directors to oversee the day-to-day operations of the business, leaving strategic decisions to members as a whole.

- **Consensus Building** – While each member has one vote, cooperatives encourage members to work with one another in their decision-making progress. If members want the cooperative to take a certain action, they must collaborate and gather most, if not, all members to agree.
- **Community-Centric** – Most cooperatives have members from the same area. Because members live where they work, they are more likely to invest there. As cooperatives become a significant part of a community, they have less incentive to leave.
- **Member Satisfaction Superior to Capital** – Cooperatives must earn a profit in order to survive as a business. However, member wellbeing is valued above earning more money. Many cooperatives have rules that keep the workplace fair, and preserve the workers’ due process rights and safety.
- **Self-Determination** - Members are more likely to invest their time and energy in the cooperative because they have input in its decisions and would share any wealth that comes from it. While traditional business models limit decision-making to its senior leadership, cooperatives give each member a stake in its future.
- **Training** – Cooperatives usually have an apprenticeship program or other training that prepares new members to participate in the business. For cooperatives to survive, they must recruit, train, and continually develop their members.
- **Open Membership** – Cooperatives generally allow any person to join regardless of gender, race, religion, political, or social status. To become a member, many cooperatives require an entry-level training program, an initial capital investment, and final approval by the membership.

Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
<p>Capital Account Cooperative</p>	<p>N/A</p>	<p>Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.</p>
<p>Voting Power</p>	<p>Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.</p>	<p>Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.</p>
<p>Member Meeting Notification</p>	<p>Requires written notification at least 10 days in advance of a meeting</p>	<p>Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.</p>
<p>Expelling or suspending members</p>	<p>Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.</p>	<p>Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.</p>
<p>Merger</p>	<p>N/A</p>	<p>Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may</p>

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

The US Federation of Worker Cooperatives determines whether a cooperative is a worker cooperative based on basic standards for worker cooperatives established in the World Declaration on Cooperative Worker Ownership (also known as the Oslo Declaration) at a meeting in Oslo, Norway in 2003 of the International Organization of Industrial, Artisanal and Service Producers' Cooperatives (CICOPA).

Almost any business can be organized as a worker cooperative. Examples include restaurants, bakeries and retail stores. Some well-known worker cooperatives are Equal Exchange headquartered in Massachusetts, a fair trade importer of chocolate and coffee and MONDRAGON Corporation located in Spain, one of the world's largest worker cooperatives that employs over 80,000 workers.

Other States:

Eleven other states have enacted worker cooperative specific statutes. These states include: Alabama, Connecticut, Delaware, Maine, Massachusetts, Oregon, Vermont, New York, Washington, Pennsylvania and Colorado.

Related Legislation:

SB 577 (Hueso) Authorizes three new securities permitting exemptions, as specified, and increases, from \$300 to \$1,000, the maximum allowable aggregate investment of any shareholder in shares of a consumer cooperative corporation or member in memberships of a consumer cooperative corporation. Pending in Senate Judiciary Committee.

Previous Legislation:

AB 1161 (Skinner) 2011 Legislative Year. This measure would have renamed the Cooperative Corporation Law, as well as, make other significant changes. Died in the Assembly Banking and Finance Committee.

AB 2525 (Bonta) 2014 Legislation Year. This bill would have created a special purpose limited liability company. Died in the Assembly Banking and Finance Committee.

Amendments:

A number of amendments are recommended below in order to maintain some consistency through the cooperative law. Some of the amendments are technical while others provide clarification of the author's intent.

- 1) On page 3, line 7, add after development "in this state."
- 2) On page 5, line 20, insert "Worker" is a natural person contributing labor or services."
- 3) On page 5, line 20, insert, "Candidate" means a worker who is being considered for membership, as defined in the corporation's articles or bylaws.
- 4) On page 6, line 33, delete "eligible" and insert "candidates"
- 5) On page 10, delete lines 12-17
- 6) On page 12, delete lines 28 & 29 and insert "in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of 3 worker-members or 5% of the worker-members. For a worker cooperative with fewer than 4 members, special meetings may be called by 5% of the worker-members."
- 7) On page 13, on line 24, add after members, insert, "provided that such notice is delivered personally."
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Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

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Matthew Dababneh, Chair

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FISCAL EFFECT: Unknown.

COMMENTS:

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	Existing CA Law	AB 816
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Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
<p>Capital Account Cooperative</p>	<p>N/A</p>	<p>Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.</p>
<p>Voting Power</p>	<p>Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.</p>	<p>Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.</p>
<p>Member Meeting Notification</p>	<p>Requires written notification at least 10 days in advance of a meeting</p>	<p>Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.</p>
<p>Expelling or suspending members</p>	<p>Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.</p>	<p>Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.</p>
<p>Merger</p>	<p>N/A</p>	<p>Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may</p>

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

The US Federation of Worker Cooperatives determines whether a cooperative is a worker cooperative based on basic standards for worker cooperatives established in the World Declaration on Cooperative Worker Ownership (also known as the Oslo Declaration) at a meeting in Oslo, Norway in 2003 of the International Organization of Industrial, Artisanal and Service Producers' Cooperatives (CICOPA).

Almost any business can be organized as a worker cooperative. Examples include restaurants, bakeries and retail stores. Some well-known worker cooperatives are Equal Exchange headquartered in Massachusetts, a fair trade importer of chocolate and coffee and MONDRAGON Corporation located in Spain, one of the world's largest worker cooperatives that employs over 80,000 workers.

Other States:

Eleven other states have enacted worker cooperative specific statutes. These states include: Alabama, Connecticut, Delaware, Maine, Massachusetts, Oregon, Vermont, New York, Washington, Pennsylvania and Colorado.

Related Legislation:

SB 577 (Hueso) Authorizes three new securities permitting exemptions, as specified, and increases, from \$300 to \$1,000, the maximum allowable aggregate investment of any shareholder in shares of a consumer cooperative corporation or member in memberships of a consumer cooperative corporation. Pending in Senate Judiciary Committee.

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Amendments:

A number of amendments are recommended below in order to maintain some consistency through the cooperative law. Some of the amendments are technical while others provide clarification of the author's intent.

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- 2) On page 5, line 20, insert "Worker" is a natural person contributing labor or services."
- 3) On page 5, line 20, insert, "Candidate" means a worker who is being considered for membership, as defined in the corporation's articles or bylaws.
- 4) On page 6, line 33, delete "eligible" and insert "candidates"
- 5) On page 10, delete lines 12-17
- 6) On page 12, delete lines 28 & 29 and insert "in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of 3 worker-members or 5% of the worker-members. For a worker cooperative with fewer than 4 members, special meetings may be called by 5% of the worker-members."
- 7) On page 13, on line 24, add after members, insert, "provided that such notice is delivered personally."
- 8) On page 18, delete lines 1-6 and insert, "Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws."

- 9) On page 21, line 9, delete "Financial Institutions" and insert "Business Oversight"
- 10) On page 21, line 17, delete "which" and insert "that"
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- 15) On page 28, line 26, delete "be qualified or filed as a sale of securities under this title."

REGISTERED SUPPORT / OPPOSITION:

Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

SUMMARY: Renames the Consumer Cooperative Corporation Law to the General Cooperative Corporation Law. Specifically, **this bill:**

- 1) Defines "worker cooperative" or "employment cooperative" as a corporation formed that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes.
- 2) Requires at least 51% of the workers shall be worker-members or eligible for membership within 2 years of becoming a worker.
- 3) Authorizes a worker cooperative to suspend a worker-member without prior notice if the worker-member is given notice and the opportunity to be heard or to provide a written response within 5 days after the suspension.
- 4) Authorizes a worker cooperative to apportion and distribute its net earnings and losses at the time and in the manner specified in the articles of incorporation or bylaws.
- 5) Requires a worker cooperative to only make patronage distributions to the worker-member class.
- 6) Defines the patrons of a worker cooperative as worker-members and authorizes their patronage to be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combinations of these measures.
- 7) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to the members.
 - a) Funds in the indivisible reserves account can be used as capital for the worker cooperative.
- 8) Allows a worker cooperative to call a special meeting with 20% or more of the worker-members.
- 9) Defines a "capital account cooperative" as a worker cooperative in which the entire net book value is reflected in member capital accounts, one for each member and an unallocated capital account, if any.

- 10) Defines a "collective board worker cooperative" as a worker cooperative in which there is only one class of members consisting of worker-members, all of whom are members of the board.
 - a) The collective board worker cooperative is not required to hold an annual meeting of the members.
- 11) Defines "worker-member" as a member who is a natural person and also a patron of a worker cooperative.
- 12) Defines "non-worker-member" as a member of a worker cooperative who is not a worker member.
- 13) Provides non-worker-member voting power in a worker cooperative shall be provided in the articles or bylaws and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
- 14) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to members. Funds in the indivisible reserves account shall, in a manner provided in the articles or bylaws, or by the board, be used as capital for the cooperative.
- 15) Provides that a worker cooperative that has not revoked its election to be governed as a worker cooperative shall not consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may merge or consolidate in a manner consistent with this chapter.
- 16) Requires a worker cooperative to provide notice of a meeting not less than 48 hours before the meeting if the meeting involves only worker-members.
- 17) Exempts a membership or share interest in a collective board worker cooperative from the definition of security.
- 18) Increases the investment limitation for Consumer Cooperatives under California's Corporate Securities Law of 1968 exemption from qualification from \$300 to \$1,000.
- 19) Excludes shares or memberships issued by worker cooperative from qualification, provided that the aggregate investment of any shareholder or member does not exceed \$5,000.
- 20) Makes finding and declarations.

EXISTING LAW:

- 1) Establishes the Consumer Cooperative Cooperation Law which allows corporations to form as a cooperative corporation. (Corporations Code, Section 12200 et seq.)
- 2) Provides that it is unlawful for any person to offer or sell any security in this state, unless such offering or sale has been qualified by the commissioner, as specified, or unless the offering or sale is covered by an express exemption. Caps the maximum aggregate investment that may be made by a shareholder in shares or by a member in memberships in a consumer cooperative corporation. As long as this cap is not exceeded, sales of those shares

or memberships are exempt from state securities permitting laws. The cap of \$300 was placed in California law, effective January 1, 1984. (Corporations Code, Section 25110)

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

"A worker cooperative has the purpose of creating and maintaining sustainable jobs and generating wealth in order to improve the quality of life of its worker-members, dignify human work, allow workers' democratic self-management, and promote community and local development.

The purpose of this act is to amend the Consumer Cooperative Corporation Law to clarify that the law applies to cooperatives in general, not just consumer cooperatives, and to create more visibility for worker cooperatives. This act is intended to provide a definition of worker cooperative for purposes of this act, and not for purposes of other laws."

Cooperatives:

AB 816 makes substantive and historical changes to the California Consumer Cooperative Corporation Law. The Legislature, in 1982 created the Consumer Cooperative Law which provides a framework for establishing and operating cooperatives. California cooperatives can trace their history back to 1844, when a group of cotton mill weavers in England organized, called themselves the Rochdale Society. The Rochdale Society adopted several principles that have become the basis of most cooperatives. These principles include: open membership; one member, one vote; cash-only trading at market prices; patronage refunds proportional to each member's use of the cooperative's services; and limited return of interest on contributed capital.

Cooperatives are enterprises in which individuals or businesses organize to furnish themselves services that the members need. They seek to provide services more efficiently and at lower cost compared to paying third parties or to each member's performing the service individually. Unlike corporations, in cooperatives, ownership and control are equal among members. Cooperatives operate according to the democratic principle of one member, one vote. Unlike business corporations, cooperatives do not seek to generate profit but rather seek to save money for their members. Similarly, members do not seek or obtain increased capital value but rather cost savings and efficiency. In contrast to stock in a corporation, membership in a cooperative is not a saleable commodity. Cooperatives exist in many forms such as agricultural, financial institutions, housing, utility, consumer to name a few.

Cooperatives generally share the following principles:

- Democratic Governance - Cooperatives generally have a one member, one vote rule. This is different from traditional business models, which often weight each owner's vote by the amount of that person's stake in the business. However, some cooperatives have an elected board of directors to oversee the day-to-day operations of the business, leaving strategic decisions to members as a whole.

- **Consensus Building** – While each member has one vote, cooperatives encourage members to work with one another in their decision-making progress. If members want the cooperative to take a certain action, they must collaborate and gather most, if not, all members to agree.
- **Community-Centric** – Most cooperatives have members from the same area. Because members live where they work, they are more likely to invest there. As cooperatives become a significant part of a community, they have less incentive to leave.
- **Member Satisfaction Superior to Capital** – Cooperatives must earn a profit in order to survive as a business. However, member wellbeing is valued above earning more money. Many cooperatives have rules that keep the workplace fair, and preserve the workers’ due process rights and safety.
- **Self-Determination** - Members are more likely to invest their time and energy in the cooperative because they have input in its decisions and would share any wealth that comes from it. While traditional business models limit decision-making to its senior leadership, cooperatives give each member a stake in its future.
- **Training** – Cooperatives usually have an apprenticeship program or other training that prepares new members to participate in the business. For cooperatives to survive, they must recruit, train, and continually develop their members.
- **Open Membership** – Cooperatives generally allow any person to join regardless of gender, race, religion, political, or social status. To become a member, many cooperatives require an entry-level training program, an initial capital investment, and final approval by the membership.

Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
<p>Capital Account Cooperative</p>	<p>N/A</p>	<p>Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.</p>
<p>Voting Power</p>	<p>Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.</p>	<p>Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.</p>
<p>Member Meeting Notification</p>	<p>Requires written notification at least 10 days in advance of a meeting</p>	<p>Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.</p>
<p>Expelling or suspending members</p>	<p>Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.</p>	<p>Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.</p>
<p>Merger</p>	<p>N/A</p>	<p>Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may</p>

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

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Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

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Matthew Dababneh, Chair

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FISCAL EFFECT: Unknown.

COMMENTS:

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Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

Patronage	If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.	If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.
Capital Account Cooperative	N/A	Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.
Voting Power	Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.	Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
Member Meeting Notification	Requires written notification at least 10 days in advance of a meeting	Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.
Expelling or suspending members	Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.	Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.
Merger	N/A	Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

The US Federation of Worker Cooperatives determines whether a cooperative is a worker cooperative based on basic standards for worker cooperatives established in the World Declaration on Cooperative Worker Ownership (also known as the Oslo Declaration) at a meeting in Oslo, Norway in 2003 of the International Organization of Industrial, Artisanal and Service Producers' Cooperatives (CICOPA).

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Other States:

Eleven other states have enacted worker cooperative specific statutes. These states include: Alabama, Connecticut, Delaware, Maine, Massachusetts, Oregon, Vermont, New York, Washington, Pennsylvania and Colorado.

Related Legislation:

SB 577 (Hueso) Authorizes three new securities permitting exemptions, as specified, and increases, from \$300 to \$1,000, the maximum allowable aggregate investment of any shareholder in shares of a consumer cooperative corporation or member in memberships of a consumer cooperative corporation. Pending in Senate Judiciary Committee.

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AB 1161 (Skinner) 2011 Legislative Year. This measure would have renamed the Cooperative Corporation Law, as well as, make other significant changes. Died in the Assembly Banking and Finance Committee.

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Amendments:

A number of amendments are recommended below in order to maintain some consistency through the cooperative law. Some of the amendments are technical while others provide clarification of the author's intent.

- 1) On page 3, line 7, add after development "in this state."
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- 3) On page 5, line 20, insert, "Candidate" means a worker who is being considered for membership, as defined in the corporation's articles or bylaws.
- 4) On page 6, line 33, delete "eligible" and insert "candidates"
- 5) On page 10, delete lines 12-17
- 6) On page 12, delete lines 28 & 29 and insert "in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of 3 worker-members or 5% of the worker-members. For a worker cooperative with fewer than 4 members, special meetings may be called by 5% of the worker-members."
- 7) On page 13, on line 24, add after members, insert, "provided that such notice is delivered personally."
- 8) On page 18, delete lines 1-6 and insert, "Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws."

- 9) On page 21, line 9, delete "Financial Institutions" and insert "Business Oversight"
- 10) On page 21, line 17, delete "which" and insert "that"
- 11) On page 21, line 33, delete "Financial Institutions" and insert "Business Oversight"
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- 15) On page 28, line 26, delete "be qualified or filed as a sale of securities under this title."

REGISTERED SUPPORT / OPPOSITION:

Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

SUMMARY: Renames the Consumer Cooperative Corporation Law to the General Cooperative Corporation Law. Specifically, **this bill:**

- 1) Defines "worker cooperative" or "employment cooperative" as a corporation formed that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes.
- 2) Requires at least 51% of the workers shall be worker-members or eligible for membership within 2 years of becoming a worker.
- 3) Authorizes a worker cooperative to suspend a worker-member without prior notice if the worker-member is given notice and the opportunity to be heard or to provide a written response within 5 days after the suspension.
- 4) Authorizes a worker cooperative to apportion and distribute its net earnings and losses at the time and in the manner specified in the articles of incorporation or bylaws.
- 5) Requires a worker cooperative to only make patronage distributions to the worker-member class.
- 6) Defines the patrons of a worker cooperative as worker-members and authorizes their patronage to be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combinations of these measures.
- 7) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to the members.
 - a) Funds in the indivisible reserves account can be used as capital for the worker cooperative.
- 8) Allows a worker cooperative to call a special meeting with 20% or more of the worker-members.
- 9) Defines a "capital account cooperative" as a worker cooperative in which the entire net book value is reflected in member capital accounts, one for each member and an unallocated capital account, if any.

- 10) Defines a "collective board worker cooperative" as a worker cooperative in which there is only one class of members consisting of worker-members, all of whom are members of the board.
 - a) The collective board worker cooperative is not required to hold an annual meeting of the members.
- 11) Defines "worker-member" as a member who is a natural person and also a patron of a worker cooperative.
- 12) Defines "non-worker-member" as a member of a worker cooperative who is not a worker member.
- 13) Provides non-worker-member voting power in a worker cooperative shall be provided in the articles or bylaws and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
- 14) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to members. Funds in the indivisible reserves account shall, in a manner provided in the articles or bylaws, or by the board, be used as capital for the cooperative.
- 15) Provides that a worker cooperative that has not revoked its election to be governed as a worker cooperative shall not consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may merge or consolidate in a manner consistent with this chapter.
- 16) Requires a worker cooperative to provide notice of a meeting not less than 48 hours before the meeting if the meeting involves only worker-members.
- 17) Exempts a membership or share interest in a collective board worker cooperative from the definition of security.
- 18) Increases the investment limitation for Consumer Cooperatives under California's Corporate Securities Law of 1968 exemption from qualification from \$300 to \$1,000.
- 19) Excludes shares or memberships issued by worker cooperative from qualification, provided that the aggregate investment of any shareholder or member does not exceed \$5,000.
- 20) Makes finding and declarations.

EXISTING LAW:

- 1) Establishes the Consumer Cooperative Cooperation Law which allows corporations to form as a cooperative corporation. (Corporations Code, Section 12200 et seq.)
- 2) Provides that it is unlawful for any person to offer or sell any security in this state, unless such offering or sale has been qualified by the commissioner, as specified, or unless the offering or sale is covered by an express exemption. Caps the maximum aggregate investment that may be made by a shareholder in shares or by a member in memberships in a consumer cooperative corporation. As long as this cap is not exceeded, sales of those shares

or memberships are exempt from state securities permitting laws. The cap of \$300 was placed in California law, effective January 1, 1984. (Corporations Code, Section 25110)

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

"A worker cooperative has the purpose of creating and maintaining sustainable jobs and generating wealth in order to improve the quality of life of its worker-members, dignify human work, allow workers' democratic self-management, and promote community and local development.

The purpose of this act is to amend the Consumer Cooperative Corporation Law to clarify that the law applies to cooperatives in general, not just consumer cooperatives, and to create more visibility for worker cooperatives. This act is intended to provide a definition of worker cooperative for purposes of this act, and not for purposes of other laws."

Cooperatives:

AB 816 makes substantive and historical changes to the California Consumer Cooperative Corporation Law. The Legislature, in 1982 created the Consumer Cooperative Law which provides a framework for establishing and operating cooperatives. California cooperatives can trace their history back to 1844, when a group of cotton mill weavers in England organized, called themselves the Rochdale Society. The Rochdale Society adopted several principles that have become the basis of most cooperatives. These principles include: open membership; one member, one vote; cash-only trading at market prices; patronage refunds proportional to each member's use of the cooperative's services; and limited return of interest on contributed capital.

Cooperatives are enterprises in which individuals or businesses organize to furnish themselves services that the members need. They seek to provide services more efficiently and at lower cost compared to paying third parties or to each member's performing the service individually.

Unlike corporations, in cooperatives, ownership and control are equal among members. Cooperatives operate according to the democratic principle of one member, one vote. Unlike business corporations, cooperatives do not seek to generate profit but rather seek to save money for their members. Similarly, members do not seek or obtain increased capital value but rather cost savings and efficiency. In contrast to stock in a corporation, membership in a cooperative is not a saleable commodity. Cooperatives exist in many forms such as agricultural, financial institutions, housing, utility, consumer to name a few.

Cooperatives generally share the following principles:

- Democratic Governance - Cooperatives generally have a one member, one vote rule. This is different from traditional business models, which often weight each owner's vote by the amount of that person's stake in the business. However, some cooperatives have an elected board of directors to oversee the day-to-day operations of the business, leaving strategic decisions to members as a whole.

- **Consensus Building** – While each member has one vote, cooperatives encourage members to work with one another in their decision-making progress. If members want the cooperative to take a certain action, they must collaborate and gather most, if not, all members to agree.
- **Community-Centric** – Most cooperatives have members from the same area. Because members live where they work, they are more likely to invest there. As cooperatives become a significant part of a community, they have less incentive to leave.
- **Member Satisfaction Superior to Capital** – Cooperatives must earn a profit in order to survive as a business. However, member wellbeing is valued above earning more money. Many cooperatives have rules that keep the workplace fair, and preserve the workers’ due process rights and safety.
- **Self-Determination** - Members are more likely to invest their time and energy in the cooperative because they have input in its decisions and would share any wealth that comes from it. While traditional business models limit decision-making to its senior leadership, cooperatives give each member a stake in its future.
- **Training** – Cooperatives usually have an apprenticeship program or other training that prepares new members to participate in the business. For cooperatives to survive, they must recruit, train, and continually develop their members.
- **Open Membership** – Cooperatives generally allow any person to join regardless of gender, race, religion, political, or social status. To become a member, many cooperatives require an entry-level training program, an initial capital investment, and final approval by the membership.

Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
<p>Capital Account Cooperative</p>	<p>N/A</p>	<p>Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.</p>
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<p>Member Meeting Notification</p>	<p>Requires written notification at least 10 days in advance of a meeting</p>	<p>Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.</p>
<p>Expelling or suspending members</p>	<p>Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.</p>	<p>Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.</p>
<p>Merger</p>	<p>N/A</p>	<p>Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may</p>

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
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According to the Author,

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Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

SUMMARY: Renames the Consumer Cooperative Corporation Law to the General Cooperative Corporation Law. Specifically, **this bill:**

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- 2) Requires at least 51% of the workers shall be worker-members or eligible for membership within 2 years of becoming a worker.
- 3) Authorizes a worker cooperative to suspend a worker-member without prior notice if the worker-member is given notice and the opportunity to be heard or to provide a written response within 5 days after the suspension.
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EXISTING LAW:

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FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

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Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
<p>Capital Account Cooperative</p>	<p>N/A</p>	<p>Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.</p>
<p>Voting Power</p>	<p>Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.</p>	<p>Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.</p>
<p>Member Meeting Notification</p>	<p>Requires written notification at least 10 days in advance of a meeting</p>	<p>Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.</p>
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<p>Merger</p>	<p>N/A</p>	<p>Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may</p>

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Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

The US Federation of Worker Cooperatives determines whether a cooperative is a worker cooperative based on basic standards for worker cooperatives established in the World Declaration on Cooperative Worker Ownership (also known as the Oslo Declaration) at a meeting in Oslo, Norway in 2003 of the International Organization of Industrial, Artisanal and Service Producers' Cooperatives (CICOPA).

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Eleven other states have enacted worker cooperative specific statutes. These states include: Alabama, Connecticut, Delaware, Maine, Massachusetts, Oregon, Vermont, New York, Washington, Pennsylvania and Colorado.

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SB 577 (Hueso) Authorizes three new securities permitting exemptions, as specified, and increases, from \$300 to \$1,000, the maximum allowable aggregate investment of any shareholder in shares of a consumer cooperative corporation or member in memberships of a consumer cooperative corporation. Pending in Senate Judiciary Committee.

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AB 1161 (Skinner) 2011 Legislative Year. This measure would have renamed the Cooperative Corporation Law, as well as, make other significant changes. Died in the Assembly Banking and Finance Committee.

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Amendments:

A number of amendments are recommended below in order to maintain some consistency through the cooperative law. Some of the amendments are technical while others provide clarification of the author's intent.

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- 2) On page 5, line 20, insert "Worker" is a natural person contributing labor or services."
- 3) On page 5, line 20, insert, "Candidate" means a worker who is being considered for membership, as defined in the corporation's articles or bylaws.
- 4) On page 6, line 33, delete "eligible" and insert "candidates"
- 5) On page 10, delete lines 12-17
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- 8) On page 18, delete lines 1-6 and insert, "Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws."

- 9) On page 21, line 9, delete "Financial Institutions" and insert "Business Oversight"
- 10) On page 21, line 17, delete "which" and insert "that"
- 11) On page 21, line 33, delete "Financial Institutions" and insert "Business Oversight"
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- 13) On page 28, line 20, delete "In the case of a worker"
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- 15) On page 28, line 26, delete "be qualified or filed as a sale of securities under this title."

REGISTERED SUPPORT / OPPOSITION:

Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

SUMMARY: Renames the Consumer Cooperative Corporation Law to the General Cooperative Corporation Law. Specifically, **this bill:**

- 1) Defines "worker cooperative" or "employment cooperative" as a corporation formed that includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of the corporation for any purposes.
- 2) Requires at least 51% of the workers shall be worker-members or eligible for membership within 2 years of becoming a worker.
- 3) Authorizes a worker cooperative to suspend a worker-member without prior notice if the worker-member is given notice and the opportunity to be heard or to provide a written response within 5 days after the suspension.
- 4) Authorizes a worker cooperative to apportion and distribute its net earnings and losses at the time and in the manner specified in the articles of incorporation or bylaws.
- 5) Requires a worker cooperative to only make patronage distributions to the worker-member class.
- 6) Defines the patrons of a worker cooperative as worker-members and authorizes their patronage to be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combinations of these measures.
- 7) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to the members.
 - a) Funds in the indivisible reserves account can be used as capital for the worker cooperative.
- 8) Allows a worker cooperative to call a special meeting with 20% or more of the worker-members.
- 9) Defines a "capital account cooperative" as a worker cooperative in which the entire net book value is reflected in member capital accounts, one for each member and an unallocated capital account, if any.

- 10) Defines a "collective board worker cooperative" as a worker cooperative in which there is only one class of members consisting of worker-members, all of whom are members of the board.
 - a) The collective board worker cooperative is not required to hold an annual meeting of the members.
- 11) Defines "worker-member" as a member who is a natural person and also a patron of a worker cooperative.
- 12) Defines "non-worker-member" as a member of a worker cooperative who is not a worker member.
- 13) Provides non-worker-member voting power in a worker cooperative shall be provided in the articles or bylaws and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.
- 14) Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to members. Funds in the indivisible reserves account shall, in a manner provided in the articles or bylaws, or by the board, be used as capital for the cooperative.
- 15) Provides that a worker cooperative that has not revoked its election to be governed as a worker cooperative shall not consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may merge or consolidate in a manner consistent with this chapter.
- 16) Requires a worker cooperative to provide notice of a meeting not less than 48 hours before the meeting if the meeting involves only worker-members.
- 17) Exempts a membership or share interest in a collective board worker cooperative from the definition of security.
- 18) Increases the investment limitation for Consumer Cooperatives under California's Corporate Securities Law of 1968 exemption from qualification from \$300 to \$1,000.
- 19) Excludes shares or memberships issued by worker cooperative from qualification, provided that the aggregate investment of any shareholder or member does not exceed \$5,000.
- 20) Makes finding and declarations.

EXISTING LAW:

- 1) Establishes the Consumer Cooperative Cooperation Law which allows corporations to form as a cooperative corporation. (Corporations Code, Section 12200 et seq.)
- 2) Provides that it is unlawful for any person to offer or sell any security in this state, unless such offering or sale has been qualified by the commissioner, as specified, or unless the offering or sale is covered by an express exemption. Caps the maximum aggregate investment that may be made by a shareholder in shares or by a member in memberships in a consumer cooperative corporation. As long as this cap is not exceeded, sales of those shares

or memberships are exempt from state securities permitting laws. The cap of \$300 was placed in California law, effective January 1, 1984. (Corporations Code, Section 25110)

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

"A worker cooperative has the purpose of creating and maintaining sustainable jobs and generating wealth in order to improve the quality of life of its worker-members, dignify human work, allow workers' democratic self-management, and promote community and local development.

The purpose of this act is to amend the Consumer Cooperative Corporation Law to clarify that the law applies to cooperatives in general, not just consumer cooperatives, and to create more visibility for worker cooperatives. This act is intended to provide a definition of worker cooperative for purposes of this act, and not for purposes of other laws."

Cooperatives:

AB 816 makes substantive and historical changes to the California Consumer Cooperative Corporation Law. The Legislature, in 1982 created the Consumer Cooperative Law which provides a framework for establishing and operating cooperatives. California cooperatives can trace their history back to 1844, when a group of cotton mill weavers in England organized, called themselves the Rochdale Society. The Rochdale Society adopted several principles that have become the basis of most cooperatives. These principles include: open membership; one member, one vote; cash-only trading at market prices; patronage refunds proportional to each member's use of the cooperative's services; and limited return of interest on contributed capital.

Cooperatives are enterprises in which individuals or businesses organize to furnish themselves services that the members need. They seek to provide services more efficiently and at lower cost compared to paying third parties or to each member's performing the service individually.

Unlike corporations, in cooperatives, ownership and control are equal among members. Cooperatives operate according to the democratic principle of one member, one vote. Unlike business corporations, cooperatives do not seek to generate profit but rather seek to save money for their members. Similarly, members do not seek or obtain increased capital value but rather cost savings and efficiency. In contrast to stock in a corporation, membership in a cooperative is not a saleable commodity. Cooperatives exist in many forms such as agricultural, financial institutions, housing, utility, consumer to name a few.

Cooperatives generally share the following principles:

- Democratic Governance - Cooperatives generally have a one member, one vote rule. This is different from traditional business models, which often weight each owner's vote by the amount of that person's stake in the business. However, some cooperatives have an elected board of directors to oversee the day-to-day operations of the business, leaving strategic decisions to members as a whole.

- **Consensus Building** – While each member has one vote, cooperatives encourage members to work with one another in their decision-making progress. If members want the cooperative to take a certain action, they must collaborate and gather most, if not, all members to agree.
- **Community-Centric** – Most cooperatives have members from the same area. Because members live where they work, they are more likely to invest there. As cooperatives become a significant part of a community, they have less incentive to leave.
- **Member Satisfaction Superior to Capital** – Cooperatives must earn a profit in order to survive as a business. However, member wellbeing is valued above earning more money. Many cooperatives have rules that keep the workplace fair, and preserve the workers’ due process rights and safety.
- **Self-Determination** - Members are more likely to invest their time and energy in the cooperative because they have input in its decisions and would share any wealth that comes from it. While traditional business models limit decision-making to its senior leadership, cooperatives give each member a stake in its future.
- **Training** – Cooperatives usually have an apprenticeship program or other training that prepares new members to participate in the business. For cooperatives to survive, they must recruit, train, and continually develop their members.
- **Open Membership** – Cooperatives generally allow any person to join regardless of gender, race, religion, political, or social status. To become a member, many cooperatives require an entry-level training program, an initial capital investment, and final approval by the membership.

Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
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Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

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Matthew Dababneh, Chair

AB 816 (Bonta) – As Amended April 13, 2015

SUBJECT: Cooperative corporations: worker cooperatives

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- 20) Makes finding and declarations.

EXISTING LAW:

- 1) Establishes the Consumer Cooperative Cooperation Law which allows corporations to form as a cooperative corporation. (Corporations Code, Section 12200 et seq.)
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or memberships are exempt from state securities permitting laws. The cap of \$300 was placed in California law, effective January 1, 1984. (Corporations Code, Section 25110)

FISCAL EFFECT: Unknown.

COMMENTS:

The findings and declarations in the bill states:

"A worker cooperative has the purpose of creating and maintaining sustainable jobs and generating wealth in order to improve the quality of life of its worker-members, dignify human work, allow workers' democratic self-management, and promote community and local development.

The purpose of this act is to amend the Consumer Cooperative Corporation Law to clarify that the law applies to cooperatives in general, not just consumer cooperatives, and to create more visibility for worker cooperatives. This act is intended to provide a definition of worker cooperative for purposes of this act, and not for purposes of other laws."

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Cooperatives are enterprises in which individuals or businesses organize to furnish themselves services that the members need. They seek to provide services more efficiently and at lower cost compared to paying third parties or to each member's performing the service individually. Unlike corporations, in cooperatives, ownership and control are equal among members. Cooperatives operate according to the democratic principle of one member, one vote. Unlike business corporations, cooperatives do not seek to generate profit but rather seek to save money for their members. Similarly, members do not seek or obtain increased capital value but rather cost savings and efficiency. In contrast to stock in a corporation, membership in a cooperative is not a saleable commodity. Cooperatives exist in many forms such as agricultural, financial institutions, housing, utility, consumer to name a few.

Cooperatives generally share the following principles:

- Democratic Governance - Cooperatives generally have a one member, one vote rule. This is different from traditional business models, which often weight each owner's vote by the amount of that person's stake in the business. However, some cooperatives have an elected board of directors to oversee the day-to-day operations of the business, leaving strategic decisions to members as a whole.

- **Consensus Building** – While each member has one vote, cooperatives encourage members to work with one another in their decision-making progress. If members want the cooperative to take a certain action, they must collaborate and gather most, if not, all members to agree.
- **Community-Centric** – Most cooperatives have members from the same area. Because members live where they work, they are more likely to invest there. As cooperatives become a significant part of a community, they have less incentive to leave.
- **Member Satisfaction Superior to Capital** – Cooperatives must earn a profit in order to survive as a business. However, member wellbeing is valued above earning more money. Many cooperatives have rules that keep the workplace fair, and preserve the workers’ due process rights and safety.
- **Self-Determination** - Members are more likely to invest their time and energy in the cooperative because they have input in its decisions and would share any wealth that comes from it. While traditional business models limit decision-making to its senior leadership, cooperatives give each member a stake in its future.
- **Training** – Cooperatives usually have an apprenticeship program or other training that prepares new members to participate in the business. For cooperatives to survive, they must recruit, train, and continually develop their members.
- **Open Membership** – Cooperatives generally allow any person to join regardless of gender, race, religion, political, or social status. To become a member, many cooperatives require an entry-level training program, an initial capital investment, and final approval by the membership.

Although worker cooperatives are currently regulated and created under the Consumer Cooperative Corporation Law, AB 816 attempts to create a new framework specific to worker cooperatives within the existing Consumer Cooperative Corporation Law.

The chart below lays out the differences between existing law and AB 816:

	Existing CA Law	AB 816
Name	Consumer Cooperative Corporation Law	General Cooperative Corporations Law
Intentions	This part is intended to primarily apply to the organization and operation of consumer cooperatives. It is also applicable to other cooperatives including but not limited to, cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.	This part is intended to apply to the organization and operation of cooperatives, including but not limited to consumer cooperatives, worker cooperatives and cooperatives formed for the purpose of recycling or treating hazardous wastes, which elect to incorporate under it.

Securities Requirements	Qualification requirements exempt the shares or memberships in a cooperative corporation if the investment does not exceed \$300	Increases the exemption amount to \$1,000. In addition, the investment of the worker member class in a worker cooperative are exempt from registration up to \$5,000.
Definition of worker-cooperative	N/A	A worker cooperative is a corporation formed under this part which includes a class of worker-members who are natural persons whose patronage consists of labor contributed to, personal services performed for, or other work performed for the corporation. Election to be organized as a worker cooperative or an employment cooperative does not create a presumption that workers are employees of this corporation for any purposes. Requires at least 51% of the workers shall be worker members or eligible for membership within 2 years of becoming a worker.
Definition of worker-member	N/A	Worker member means a member who is a natural person and also a patron of a worker cooperative.
Definition of non-worker member	N/A	Non-worker member means a member of a worker cooperative who is not a worker member.
Articles of Incorporation	N/A	Corporation must state whether it is a worker cooperative
Collective Board Worker Cooperative	N/A	Defined as only one class of members which is the worker member class and all worker members are on the board. While most cooperatives are required to meet on an annual basis- this requirement does not apply to a collective board worker cooperative. Provides an exclusion from definition of security for managing members.

<p>Patronage</p>	<p>If a corporation is organized to provide goods or services to its member, the corporation's patrons are those who purchase those types of goods from, or use those type services of, the corporation.</p>	<p>If the corporation is organized as a worker cooperative, the corporation's patrons are its worker-members. The corporation may be measured by work performed or personal services contributed, including wages earned, number of hours worked, number of jobs created, or some combination of these measures.</p>
<p>Capital Account Cooperative</p>	<p>N/A</p>	<p>Defined as a worker cooperative whose entire net book value is reflected in member capital accounts, one for each member, and an unallocated capital account. Each member only has one vote in any matter requiring voting by a member.</p>
<p>Voting Power</p>	<p>Defined as the power to vote for the election of directors at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event that has yet occurred.</p>	<p>Provides non worker member voting power in a worker cooperative shall be provided in the articles or bylaw and is limited to approval rights only over a merger, sale of major assets, reorganization, or dissolution. Approval rights shall not include the right to propose any action.</p>
<p>Member Meeting Notification</p>	<p>Requires written notification at least 10 days in advance of a meeting</p>	<p>Reduces the time-frame to at least 48 hours before the meeting if the meeting involves only worker members.</p>
<p>Expelling or suspending members</p>	<p>Requires 15 day prior notice of the expulsion, suspension or termination and the reasons and allows an opportunity for the member to respond at least 5 days prior to the expulsion, suspension, or termination.</p>	<p>Allows a worker cooperative to suspend a worker member without prior notice if the worker member is given notice and the opportunity to be heard within 5 days after the suspension.</p>
<p>Merger</p>	<p>N/A</p>	<p>Prohibits a worker cooperative from consolidate or merge with another corporation other than another worker cooperative. Two or more worker cooperatives may</p>

		merge or consolidate.
Indivisible Reserves Account	N/A	Allows a worker cooperative to create an indivisible reserves account that shall not be distributed to its members. Allows the account to be used as capital for the cooperative.
Special Meetings	Allows a special meeting to be called by the board if at least 5% or more of the members call it.	A special meeting of a worker cooperative may be called only by 20% or more of the worker-members.

Need for the bill:

According to the Author,

"California's existing cooperative law is the Consumer Cooperative Corporations statute. Although worker cooperatives may form under that statute, it contains no provisions specific to the formation and governance of worker cooperatives. The existing statute does not include labor in its definition of patronage, it does not provide for member capital accounts, and its lengthy notice requirement for member meetings does not suit worker cooperatives. Further, the current \$300 securities exemption for members is too small to allow worker cooperatives to raise capital for their business."

Background:

A worker cooperative is a business democratically owned and governed by its worker-owners. A worker cooperative is distinct from other kinds of cooperatives (consumer, producer, housing, financial, etc.) in that its members are its workers. Worker cooperatives are well established throughout Europe and Latin America but they are less common in the United States. The U.S. Federation of Worker Cooperatives estimates that there are currently about 350 worker cooperatives in the United States, employing over 5,000 people and account for \$500 million in annual revenue. According to the U.S. Federation of Worker Cooperatives, California has approximately 50 established worker cooperatives.

The US Federation of Worker Cooperatives determines whether a cooperative is a worker cooperative based on basic standards for worker cooperatives established in the World Declaration on Cooperative Worker Ownership (also known as the Oslo Declaration) at a meeting in Oslo, Norway in 2003 of the International Organization of Industrial, Artisanal and Service Producers' Cooperatives (CICOPA).

Almost any business can be organized as a worker cooperative. Examples include restaurants, bakeries and retail stores. Some well-known worker cooperatives are Equal Exchange headquartered in Massachusetts, a fair trade importer of chocolate and coffee and MONDRAGON Corporation located in Spain, one of the world's largest worker cooperatives that employs over 80,000 workers.

Other States:

Eleven other states have enacted worker cooperative specific statutes. These states include: Alabama, Connecticut, Delaware, Maine, Massachusetts, Oregon, Vermont, New York, Washington, Pennsylvania and Colorado.

Related Legislation:

SB 577 (Hueso) Authorizes three new securities permitting exemptions, as specified, and increases, from \$300 to \$1,000, the maximum allowable aggregate investment of any shareholder in shares of a consumer cooperative corporation or member in memberships of a consumer cooperative corporation. Pending in Senate Judiciary Committee.

Previous Legislation:

AB 1161 (Skinner) 2011 Legislative Year. This measure would have renamed the Cooperative Corporation Law, as well as, make other significant changes. Died in the Assembly Banking and Finance Committee.

AB 2525 (Bonta) 2014 Legislation Year. This bill would have created a special purpose limited liability company. Died in the Assembly Banking and Finance Committee.

Amendments:

A number of amendments are recommended below in order to maintain some consistency through the cooperative law. Some of the amendments are technical while others provide clarification of the author's intent.

- 1) On page 3, line 7, add after development "in this state."
- 2) On page 5, line 20, insert "Worker" is a natural person contributing labor or services."
- 3) On page 5, line 20, insert, "Candidate" means a worker who is being considered for membership, as defined in the corporation's articles or bylaws.
- 4) On page 6, line 33, delete "eligible" and insert "candidates"
- 5) On page 10, delete lines 12-17
- 6) On page 12, delete lines 28 & 29 and insert "in a worker cooperative with more than four worker-members, a special meeting may only be called by the greater of 3 worker-members or 5% of the worker-members. For a worker cooperative with fewer than 4 members, special meetings may be called by 5% of the worker-members."
- 7) On page 13, on line 24, add after members, insert, "provided that such notice is delivered personally."
- 8) On page 18, delete lines 1-6 and insert, "Subdivision (a) shall not apply to any amounts in the indivisible reserve account. Any amount in the indivisible reserve account shall, upon dissolution, be allocated to a cooperative development organization designated in the articles of incorporation or the bylaws."

- 9) On page 21, line 9, delete "Financial Institutions" and insert "Business Oversight"
- 10) On page 21, line 17, delete "which" and insert "that"
- 11) On page 21, line 33, delete "Financial Institutions" and insert "Business Oversight"
- 12) Take out Sections 26 & 27 in the measure
- 13) On page 28, line 20, delete "In the case of a worker"
- 14) On page 28, delete lines 21-25
- 15) On page 28, line 26, delete "be qualified or filed as a sale of securities under this title."

REGISTERED SUPPORT / OPPOSITION:

Support

Ease Bay Community Law Center (Co-Sponsor)
Roots of Change
2 Individuals

Opposition

2 Individuals

Analysis Prepared by: Kathleen O'Malley / B. & F. / (916) 319-3081