SECOND REGULAR SESSION

[P E R F E C T E D**]**

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 773

93RD GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, February 2, 2006, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 773, adopted February 22, 2006.

Taken up for Perfection February 22, 2006. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

3330S.04P

AN ACT

To repeal sections 274.110 and 348.432, RSMo, and to enact in lieu thereof three new sections relating to agriculture.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 274.110 and 348.432, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 274.110, 348.230, and 348.432, to read as follows:

274.110. 1. The affairs of the association shall be managed by a board of not less than five directors, elected by the members from their own number.

2. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members of that district. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to such districts and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association.

3. The bylaws may provide that one or more directors may be appointed by any public official or commission or by the other directors selected by the

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

members or their delegates. Such directors shall represent primarily the interest of the general public in such associations. The directors so appointed need not be members of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors.

4. An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee.

5. **Any interim forming board may provide a fair remuneration for the time actually spent by the officers and directors in its service and for the service of the members of its executive committee, provided that the amount of such remuneration is voted on and agreed to by a majority of the association's members prior to payment. If such a vote is taken by ballot, only those ballots received or returned shall be considered when determining the final result, and a majority of the returned or received ballots must affirm the remuneration for such to take effect.**

6. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members of the association, or differing from terms generally current in that district. The bylaws may provide that no director shall occupy any position in the association, except the president and secretary on regular salary or substantially full-time pay.

[6.**]** **7.** The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

[7.**]** **8.** When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws provide for the election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

348.230. The Missouri agricultural and small business development authority, subject to appropriation, shall pay for the first full year of charged interest on any applicable Missouri linked deposit program loan, as provided in sections 30.750 to 30.850, RSMo. For the purpose of this section, the term "applicable loan" shall mean any loan made and used solely for the acquisition of dairy cows and other replacement dairy females.

348.432. 1. The tax credit created in this section shall be known as the "New Generation Cooperative Incentive Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(3) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility and approved by the authority;

(4) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(5) "Employee-qualified capital project", an eligible new generation cooperative with capital costs greater than fifteen million dollars which will employ at least sixty employees;

(6) "Large capital project", an eligible new generation cooperative with capital costs greater than one million dollars;

(7) "Producer member", a person, partnership, corporation, trust or limited liability company whose main purpose is agricultural production that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;

(8) "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source;

(9) "Small capital project", an eligible new generation cooperative with capital costs of no more than one million dollars.

3. Beginning tax year 1999, and ending December 31, 2002, any producer

member who invests cash funds in an eligible new generation cooperative or eligible new generation processing entity may receive a credit against the tax or estimated quarterly tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars.

4. For all tax years beginning on or after January 1, 2003, any producer member who invests cash funds in an eligible new generation cooperative or eligible new generation processing entity may receive a credit against the tax or estimated quarterly tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars. Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax pursuant to subsection 3 of this section. If a quarterly tax credit claim or series of claims contributes to causing an overpayment of taxes for a taxable year, such overpayment shall not be refunded but shall be applied to the next taxable year.

5. A producer member shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the producer member meets all criteria prescribed by this section and is approved by the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section may be carried back to any of the producer member's three prior taxable years and carried forward to any of the producer member's five subsequent taxable years regardless of the type of tax liability to which such credits are applied as authorized pursuant to subsection 3 of this section. Tax credits issued pursuant to this section may be assigned, transferred, sold or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the producer member. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

6. Ten percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to small capital projects. If any portion of the ten percent of tax credits offered to small capital costs projects is unused in any calendar year, then the unused portion of tax credits may be offered to employee-qualified capital projects and large capital projects. If the authority receives more applications for tax credits for small capital projects than tax

credits are authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for small capital projects.

7. Ninety percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to employee-qualified capital projects and large capital projects. If any portion of the ninety percent of tax credits offered to employee-qualified capital projects and large capital costs projects is unused in any fiscal year, then the unused portion of tax credits may be offered to small capital projects. The maximum tax credit allowed per employee-qualified capital project is three million dollars and the maximum tax credit allowed per large capital project is one million five hundred thousand dollars. If the authority approves the maximum tax credit allowed for any employee-qualified capital project or any large capital project, then the authority, by rule, shall determine the method of distribution of such maximum tax credit. In addition, if the authority receives more tax credit applications for employee-qualified capital projects and large capital projects than the amount of tax credits authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for employee-qualified capital projects and large capital projects.

8. No new tax credits shall be approved, issued, or redeemed for any new generation cooperative not in compliance with all the provisions established in 7 U.S.C. Section 181 known as the Packers and Stockyards Act, 1921. Any new generation cooperative established after August 28, 2007, shall be in compliance with all of the provisions established in 7 U.S.C. Section 181 known as the Packers and Stockyards Act, 1921, before any tax credit is approved, issued, or redeemed by the state.

9. Producer members of any new generation processing entity claiming the exemption established in 9 C.F.R. 201-200 shall not be eligible for tax credits as they are established in this section.

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