

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 85

(Senator M. Washington)

Judicial Proceedings

Economic Matters

**Corporations and Associations - Limited Worker Cooperative Associations -
 Authorization (Maryland Limited Cooperative Association Act)**

This bill establishes the Maryland Limited Worker Cooperative Association Act, which generally provides for the formation, operation, and dissolution of a limited worker cooperative association (LWCA). An LWCA is a Maryland Limited Liability Company (LLC) that elects to be an LWCA in accordance with the bill’s provisions. A presently existing obligation or contract right may not be impaired in any way by the bill.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$2.5 million in FY 2025 only for one-time State Department of Assessments and Taxation (SDAT) programming costs, as discussed below. Potential minimal increase in filing fee revenues.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	2.5	0	0	0	0
Net Effect	(\$2.5)	\$0.0	\$0.0	\$0.0	\$0.0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Select Definitions

“Collective worker cooperative” means an LWCA that has only one class of members consisting of worker members who manage all of the affairs of the association.

“Investor member” means a member of an LWCA who is not required or permitted to conduct patronage with the association, in the member’s capacity as an investor member, in order to receive or retain the member’s interest in the association.

“Patron member” means a member of an LWCA who is required or permitted to conduct patronage with the association.

“Representative” means a person serving on the board of representatives of an LWCA.

“Worker member” means a patron member of an LWCA who is a natural person and whose patronage consists of or includes labor contributed to or for the association.

In General

The bill creates a new subtitle within the Corporations and Associations Article (Maryland Limited Worker Cooperative Association Act). Its provisions do not affect any statute or rule of law (or create any implication that a contrary or different rule of law is or would be) applicable to an LLC that is not an LWCA.

An LLC may elect to be an LWCA, and an LWCA may further elect to be a collective worker cooperative by including statements to that effect in the articles of organization. An LLC must clearly reference it is an LWCA by prominently indicating the fact on legal documents, as specified.

Unless an LWCA has elected to be a collective worker cooperative, the articles of organization of an LWCA must include the names of those individuals who will serve as representatives until their successors are elected and qualify.

Initial Organization

After formation of an LWCA, if initial representatives are named in the articles of organization, they must hold an organizational meeting to adopt the cooperative agreement and carry out any other necessary business, as specified. If initial representatives are not named in the articles of organization, the person who has caused the articles of organization

to be executed and filed for record must designate the initial representatives and call a meeting to adopt an initial cooperative agreement and carry out any other necessary business, as specified. The bill includes additional provisions regarding the designation and service of the initial representatives.

After formation of a collective worker cooperative, the initial worker members must hold an organizational meeting to adopt the cooperative agreement and conduct any other necessary business, as specified.

Termination of Status

An LWCA may terminate its status as an LWCA by amending its articles of organization to delete the statements required when the LLC made an election to be an LWCA. The termination is subject to the approval of two-thirds of the voting power of worker members and two-thirds of all members entitled to vote.

Cooperative Agreement

Among other items, an LWCA cooperative agreement must include information related to:

- the capital structure of the LWCA;
- classes or other types of members' interests, as specified;
- the method for admitting members;
- the transferability of a membership interest;
- the number and terms of representatives, as specified;
- contributions of members; and
- the election of the LWCA to be taxed as a partnership or corporation for federal and State income tax purposes, as specified.

An LWCA cooperative agreement may include any other provision necessary to manage and regulate the affairs of the LWCA, as specified. The bill includes additional provisions regarding the effective date and impact of cooperative agreements.

Membership, Assembly, Worker's Compensation Insurance, and Voting Power

An LWCA may include multiple classes of members whose rights and membership interests are determined by the cooperative agreement. To begin business, an LWCA must have at least three worker members, unless the sole member is an LWCA. A person becomes a member as provided in the articles of organization or cooperative agreement; as the result of a merger or a conversion, as specified; or with the consent of all worker members. An insurer that provides worker's compensation insurance to members of an LWCA must calculate premiums for members who are covered employees, as specified;

the provisions may be enforced by the Maryland Insurance Commissioner, and related hearings and appeals are subject to the procedures specified in Title 11, Subtitle 5 of the Insurance Article.

Among numerous other provisions, the bill also (1) specifies limitations of membership; (2) addresses debt, obligation, or other liability of an LWCA, its members, and voting members; (3) establishes requirements for an annual meeting, or special meeting, of the assembly; and (4) specifies requirements related to the voting power of members.

Board of Representatives

An LWCA (other than a collective worker cooperative) must have a board of representatives consisting of at least three individuals. The board, or individuals delegated such duties, must manage the affairs of the LWCA and the board may adopt policies and procedures that do not conflict with the articles of organization, cooperative agreement or the bill's provisions. An individual is not an agent of an LWCA solely by virtue of being a representative. Representatives must be elected for terms determined by the cooperative agreement.

Additional Provisions

Among other provisions, the bill also:

- allows an LWCA to *dissolve* if specified conditions are met;
- requires the last remaining member's personal representative, guardian, successor, or assignee to continue the LLC and to be admitted as a member, if included in the cooperative agreement, as specified;
- allows a deceased member's personal representative to exercise the rights of the deceased member, as specified;
- requires an LWCA to apportion and distribute its profits and losses (and net earnings), as specified;
- allows a foreign worker cooperative to register and do business in the State, subject to applicable statutory provisions in regard to foreign LLCs; and
- explicitly includes an LWCA and a collective worker cooperative in the provisions of the Tax-General Article that impose personal liability for tax, including applicable interest and penalties, for admissions and amusement tax, motor fuel tax, income tax, and sales and use tax, as specified.

The bill also incorporates LWCAs in other provisions of the Corporations and Associations Article, including those related to the definition of a governing document and required filing fees.

Current Law: State law authorizes five types of cooperatives (agricultural, consumer, electric, transportation, and housing) to do business in the State, which are generally subject to the Maryland general corporation laws. For example, a consumer cooperative is a corporation (stock or nonstock) that is formed to engage in any lawful business to acquire, produce, manufacture, furnish, or distribute any goods and services on a cooperative basis for the mutual benefit of its members and patrons or the members and patrons of any member cooperative, or both. Any five or more adult individuals, or two or more entities operating on a cooperative basis, may incorporate as a consumer cooperative. Consumer cooperatives are governed by Title 5, Subtitle 5A of the Corporations and Associations Article.

State Expenditures: SDAT advises that due to planned programming changes, the Maryland Business Express Service (MBES) is unable to be further altered in the manner needed to implement the bill from approximately July 2024 through December 2025. Thus, to make the required changes, a new system (separate from MBES) must be developed by an outside vendor, incurring a cost of at least \$2.5 million in fiscal 2025. Under standard operating circumstances, SDAT programming costs are approximately \$278,400.

Small Business Effect: The bill may have a meaningful impact on small businesses by allowing the formation of worker cooperatives.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 870 of 2023.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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