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Executive Order Assists Minnesota Cooperatives During the COVID-19 Peacetime Emergency

Legal Update

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On August 26, 2020, Minnesota Governor Tim Walz signed Emergency Executive Order 20-86 allowing Minnesota cooperatives to: (1) hold virtual annual meetings, or (2) if a virtual meeting is not feasible, to forego its annual members' meeting if the cooperative wishes to avoid in-person gatherings due to the public health threat caused by the COVID-19 pandemic.

The Executive Order also gives a cooperative discretion to conduct director elections via mail, even if vote by mail was not previously authorized within the cooperative's articles and bylaws. For any cooperative that chooses to hold director elections by mail, the requirements of existing cooperative law still apply, namely: (1) for 308A coops, Minnesota Statutes Sec. 308A.311, subd. 4(a)-(d) and subd. 5, and (2) for 308B coops, Sec. 308B.411, subd. 5(1)-(3), which require a mailed ballot to be in the form prescribed by the board and set forth specific mailing procedures.

The Executive Order provides relief to cooperative members similar to relief previously provided to corporate shareholders, who were permitted to hold remote meetings and avoid gatherings during the COVID-19 pandemic pursuant to Executive Order 20-43, issued by Governor Walz on April 24, 2020. The issue for cooperatives stemmed from the requirements in Sec. 308A.311, subd. 2 and 308B.411, subd. 3 that directors be elected at the regular members' meeting. If the cooperative were to proceed with the physical meeting, members choosing not to attend due to COVID-19 concerns may not have had the right to participate in the meeting if the cooperative's bylaws or articles do not authorize mail or electronic voting pursuant to Sec. 308A.311, subd. 4(a), resulting in a failure to meet quorum requirements.

Cooperative associations have more flexibility, since Sec. 308B.545, subd. 3 permits the board to authorize voting by mail or by alternative method. Cooperative associations are also permitted under Sec. 308B.532 to hold member meeting by means of remote communication, but those remote meetings must be authorized in the articles or bylaws.

Given that the Executive Order extends only through the peacetime emergency, cooperatives should review the provisions within their articles and bylaws related to election of directors, member meetings, and member voting and consider

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amendments to those governing documents at their annual meeting. Maximizing the cooperative's flexibility to hold meetings remotely and ensuring that members may take advantage of more modern modes of voting permitted under the statutes may increase member participation among all generations beyond the current pandemic.

For more information, contact a member of the Food & Agribusiness or Cooperatives groups.