

State of Wisconsin



2017 Assembly Bill 353

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2017 WISCONSIN ACT 76

AN ACT *to repeal* 185.21 (2) (c); *to renumber and amend* 185.31 (1) and 185.47 (1); *to amend* 185.01 (4) (a), 185.03 (10) (d), 185.38 (1) (intro.), 185.47 (title), 185.47 (2), 185.47 (3) and 185.72 (1) (c); and *to create* 185.12 (5m), 185.31 (1) (b), 185.38 (1m), 185.47 (1) (b) 2. and 3. and (d) and 185.995 of the statutes; **relating to:** the organization and operation of cooperatives and extensions of credit by electric cooperatives.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 185.01 (4) (a) of the statutes is amended to read:

185.01 (4) (a) ~~Either no~~ No member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, ~~or the foreign cooperative does not pay dividends on stock or membership capital in excess of 8 percent per year; and~~

SECTION 2. 185.03 (10) (d) of the statutes is amended to read:

185.03 (10) (d) The notice under par. (b) is mailed to the last-known address of each owner, and the name and address of each owner to whom notice is mailed or an Internet site address where this information is posted, together with a brief description of the reason for the notice, is published as a class 1 notice under ch. 985 on or before the date of mailing in a newspaper published in the municipality containing the service area of the cooperative.

SECTION 3. 185.12 (5m) of the statutes is created to read:

185.12 (5m) (a) In this subsection, “cooperative holding company” means a cooperative that owns or controls subsidiaries operating on a cooperative basis as the primary part of their business and activities.

(b) Notwithstanding sub. (2), a cooperative holding company and its cooperative subsidiaries may, in its articles or bylaws, permit members to base voting power in whole or in part on members’ current or recent patronage activity, or on members’ patronage equity in the cooperative, or on a combination of both.

(c) If the articles or bylaws provide for voting power as described in par. (b), whenever this chapter requires an action to be approved by a majority vote of members or by a vote of a greater proportion of members, approval of the action is by, respectively, a majority of the member votes cast or such greater proportion of the member votes cast.

SECTION 4. 185.21 (2) (c) of the statutes is repealed.

SECTION 5. 185.31 (1) of the statutes is renumbered 185.31 (1) (a) and amended to read:

185.31 (1) (a) All powers of the cooperative shall be exercised by or under authority of, and the business and affairs of a cooperative shall be managed under the direc-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

tion of, the board, except as otherwise provided in this chapter. ~~Every~~ Except as provided in par. (b), every director shall be a member or a representative of a member ~~who~~ that is other than a natural person. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified districts.

SECTION 6. 185.31 (1) (b) of the statutes is created to read:

185.31 (1) (b) 1. In this paragraph, “outside director” means a director who is neither a member nor a representative of a member that is other than a natural person.

2. Subject to subds. 3. and 4., if authorized by the bylaws, a cooperative may allow for not more than 2 outside directors.

3. The total number of outside directors may not exceed 20 percent of the total number of directors, as established under sub. (2).

4. No person may serve as an outside director unless a majority of the members or delegates voting or a majority of directors who are not outside directors, as specified in the bylaws, votes to approve the person as a director.

5. An outside director has the same voting rights as a director who is not an outside director.

SECTION 7. 185.38 (1) (intro.) of the statutes is amended to read:

185.38 (1) (intro.) Except as authorized by the members, the board may not dispose of all or substantially all of a cooperative’s ~~fixed~~ assets. At any meeting the members may authorize the disposition of all or substantially all of a cooperative’s ~~fixed~~ assets if:

SECTION 8. 185.38 (1m) of the statutes is created to read:

185.38 (1m) (a) Except as authorized by the members, the board may not dispose of a cooperative’s assets under any of the following circumstances:

1. Other than in the ordinary course of business.

2. In a manner that jeopardizes the purpose for which the cooperative was created or its financial vitality.

(b) At any meeting the members may authorize the disposition of a cooperative’s assets under circumstances described in par. (a) if all of the following apply:

1. Notice that the disposition will be considered at the meeting has been given to all persons entitled to vote on the matter.

2. The disposition has been approved by two-thirds of those entitled to vote on the matter who vote at the meeting.

SECTION 9c. 185.47 (title) of the statutes is amended to read:

185.47 (title) Books Financial books and records; penalty for refusal to produce.

SECTION 9e. 185.47 (1) of the statutes is renumbered 185.47 (1) (a) and amended to read:

185.47 (1) (a) A cooperative shall keep correct and complete financial books and records ~~of account, and shall also keep, including~~ minutes of the proceedings of

meetings of its members, board, and executive committee. The cooperative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. ~~At~~

(b) 1. Except as provided in subds. 2. and 3. and par. (c), and subject to par. (d), at any reasonable time, any member or stockholder, or his or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the cooperative at least one week in advance, may examine for a proper purpose any ~~books or of the cooperative’s~~ records pertinent to the purpose specified in the notice.

(c) The board may deny a request to examine any financial books ~~and or~~ records if the board determines that the purpose is not directly related to the requester’s interest as a member or stockholder in the business or affairs of the cooperative ~~and or~~ is otherwise contrary to the best interests of the cooperative.

SECTION 9g. 185.47 (1) (b) 2. and 3. and (d) of the statutes are created to read:

185.47 (1) (b) 2. Except as provided in subd. 3. and par. (c), and subject to par. (d), at any reasonable time, any member or stockholder, or his or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the cooperative at least one week in advance, may examine for a proper purpose any of the cooperative’s financial books covering the current or preceding 5 fiscal years and that are pertinent to the purpose specified in the notice.

3. No person is entitled to examine any financial books or records under subd. 1. or 2. if the cooperative is subject to any legal duty to preserve the confidentiality of, or protect the privacy of information contained in, the financial books or records.

(d) The cooperative may condition examination of financial books or records on the member or stockholder reimbursing the cooperative for the reasonable costs to produce the financial books or records and make requested copies of them.

SECTION 9i. 185.47 (2) of the statutes is amended to read:

185.47 (2) In any proceedings, or upon petition for such purpose any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the cooperative’s financial books or records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to be brought within this state. Such documents shall be kept at such place and for such time and purposes as the order designates. Any cooperative failing to comply with the order is subject to dissolution, and its directors and officers are liable for contempt of court.

SECTION 9k. 185.47 (3) of the statutes is amended to read:

185.47 (3) Subject to ~~the time, notice and purpose~~ all requirements of and limitations specified in sub. (1), a member or stockholder of a cooperative may examine the financial books and records of any other cooperative or other person that is a wholly owned subsidiary of the cooperative or in which the cooperative owns a controlling interest.

SECTION 10. 185.72 (1) (c) of the statutes is amended to read:

185.72 (1) (c) The cooperative failed to comply with a court order for the production of financial books, records or other documents of the cooperative as provided in s. 185.47.

SECTION 11. 185.995 of the statutes is created to read:

185.995 Extensions of credit by electric cooperatives for certain projects. (1) In this section:

(a) “Electric cooperative” means an association incorporated under this chapter or authorized to do business in this state that carries on the business of generating, transmitting, or distributing electric energy to its members at wholesale or retail.

(b) “Notice of electric account charge” means the written notice by which subsequent purchasers or tenants will be given notice that they will be required to pay a project electric account charge.

(c) “Project electric account charge” means the charge placed on a member’s account by which an electric cooperative may recover costs, including financing costs of qualifying expenses.

(d) “Qualifying expenses” means expenses associated with a qualifying project, including any purchase price or installation cost.

(e) “Qualifying project” means any project relating to energy efficiency, energy conservation, electric safety, or emergency back-up generation.

(2) (a) An electric cooperative’s extension of credit to its member or its member’s landlord to finance qualifying expenses is not subject to chs. 421 to 426 if the electric cooperative enters into a written agreement with the member or the member’s landlord covering the extension of credit and if the written agreement satisfies all requirements under pars. (b) and (c).

(b) The written agreement under par. (a) may not contain any provision that does any of the following:

1. Requires a schedule of payments under which any one payment is not substantially equal to all other payments or under which the intervals between any consecutive payments differ substantially. This subdivision does not apply to any of the following:

a. A down payment related to the qualifying project that is excluded from the amount being financed.

b. A final scheduled payment that is not more than 5 percent greater than the average amount of the other, substantially equal, scheduled payments.

c. An initial scheduled payment that includes interest charged for a first installment period that is shorter than,

or not more than 150 percent longer than, the remainder of the installment periods.

2. Requires payment of a delinquency charge for an installment not paid in full by its scheduled due date under any of the following circumstances:

a. The period of delinquency is 10 days or less and the installment is paid in full on or before the 10th day after its due date.

b. The delinquency charge exceeds 1 percent of the unpaid amount of the installment.

c. A delinquency charge was previously imposed for the same unpaid installment or there was a deferral of the installment payment.

3. Allows a charge to be imposed that exceeds \$30 for each check presented for payment that is returned as dishonored.

4. Requires the party who does not prevail in a court proceeding or other dispute to pay the attorney fees of the prevailing party in the court proceeding or dispute.

5. Authorizes the electric cooperative to confess judgment against the member or member’s landlord in any action arising under the agreement or otherwise requires the member or member’s landlord to provide a power of attorney or other authorization for the electric cooperative to confess judgment.

(c) The written agreement under par. (a) shall include a provision that grants to the member or member’s landlord the right to prepay in full or in part, at any time and without penalty, the unpaid balance of the extension of credit.

(d) The written agreement under par. (a) may provide that costs, including financing costs and installment repayments, must be recovered as a project electric account charge on the account of the member associated with the property where the qualifying project will be completed. If the written agreement is between the cooperative and the member’s landlord, this paragraph does not apply unless the landlord and tenant consent in writing.

(e) 1. The written agreement under par. (a) may provide that project electric account charges will apply to subsequent owners or tenants of the property associated with the property where the qualifying project will be completed.

2. If the written agreement is between the cooperative and a member who is a tenant of the property associated with the account, this paragraph does not apply unless both the landlord and the tenant consent in writing and the agreement provides notice to the landlord of the obligation contained in sub. (6).

(3) An electric cooperative that extends credit as provided in sub. (2) (a) may recover the costs, including financing costs and repayment installments, as line item charges on its electric bills issued to the member or member’s landlord.

(4) If a written agreement under sub. (2) (a) provides that project electric account charges will apply to subsequent account holders, the electric cooperative may record a written notice of electric account charge in the office of the register of deeds for the county in which the property associated with the electric account is located. The notice of electric account charge shall not constitute a lien on the property. The notice of electric account charge shall include at least all of the following:

(a) A legal description of the property associated with the electric account.

(b) A statement that the electric account associated with the property is subject to project electric account charges.

(c) A statement informing prospective purchasers of the property of how to ascertain the amount of the charges, the length of time the charges are expected to remain in effect, and the obligation under sub. (6) to notify each lessee if the purchaser leases the property.

(d) A statement that the notice does not constitute a lien on the property.

(5) If there is a transfer of ownership or change in tenancy of property associated with an electric account that is subject to a project electric account charge, the electric cooperative may recover the project electric account charge from the transferee or tenant as line item charges on the transferee or tenant's electric bills if a written notice of electric account charge was properly recorded with reference to the property prior to the date of the transfer of ownership or change in tenancy.

(6) If the electric account associated with property is subject to a project electric account charge pursuant to a written agreement under sub. (2), the property owner shall provide notice of the written agreement and a copy of the notice of electric account charge to the purchaser

or each subsequent lessee of the property responsible for paying the electric bills issued by the electric cooperative. If a subsequent lessee is responsible for payment of charges under this subsection and, before entering into a lease for the property, the property owner failed to provide the subsequent lessee with notice as required by this subsection, the subsequent lessee may void the lease and is entitled to the return of any deposits made under or with respect to the lease or may deduct from the lessee's rent, for no more than one-half of the term of the lease, the amount of the charges for which the subsequent lessee is responsible under this subsection. If the purchaser is responsible for a project electric account charge under this subsection and, before entering into an agreement to purchase the property, the property owner failed to provide the purchaser with notice as required by this subsection, the purchaser may void the purchaser's contract with the property owner and is entitled to the return of any deposits made under the purchaser's contract.

(7) An electric cooperative may contract with any 3rd party to perform, on its behalf, any function permitted of the cooperative under this section, including the provision of financing, but the 3rd party must comply with all requirements under this section applicable to the cooperative.

(8) (a) By entering into a written agreement under sub. (2), an electric cooperative does not assume liability or provide any warranty for any aspect of a qualifying project or any qualifying expense. This paragraph does not apply with respect to work undertaken by an electric cooperative and does not limit any rights or remedies of a member or member's landlord against any other party.

(b) This section does not limit an electric cooperative's authority to offer to its members any other type of financing otherwise available under law.