



State of Wisconsin
2017 - 2018 LEGISLATURE

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ARG:jld

**SENATE SUBSTITUTE AMENDMENT 2,
TO SENATE BILL 281**

November 7, 2017 - Offered by Senators RISSER, VINEHOUT, MILLER, L. TAYLOR,
WIRCH, HANSEN, LARSON, CARPENTER and ERPENBACH.

1 **AN ACT to create** 185.995 of the statutes; **relating to:** extensions of credit by
2 electric cooperatives.

Analysis by the Legislative Reference Bureau

Under this substitute amendment, an electric cooperative's extension of credit to its member or its member's landlord to finance qualifying expenses is not subject to most provisions of the Wisconsin Consumer Act 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 certain requirements, discussed below. The substitute amendment defines "electric cooperative" as a cooperative that carries on the business of generating, transmitting, or distributing electric energy to its members at wholesale or retail. The substitute amendment defines "qualifying expenses" as expenses associated with any project relating to energy efficiency, energy conservation, electric safety, or emergency back-up generation (qualifying project). The written agreement between the electric cooperative and the member or the member's landlord may not contain any provision that does any of the following: 1) with exceptions, 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; 2) requires payment of a late charge for an installment payment that is ten or fewer days late or a late charge that is greater than 1 percent of the unpaid amount of the installment; 3) allows a charge of more than \$30 for a dishonored check; 4) requires

the party who does not prevail in a court proceeding or other dispute to pay the attorney fees of the prevailing party; or 5) authorizes the electric cooperative to confess judgment against the member or member's landlord in any action arising under the agreement. The written agreement must include a provision that grants to the member or member's landlord the right to prepay, without penalty, the unpaid balance of the extension of credit.

The substitute amendment also includes provisions relating to the electric cooperative's right to recover costs associated with a qualifying project against the borrower and against other persons. An electric cooperative that extends credit to its member or its member's landlord to finance qualifying expenses 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. The written agreement between the electric cooperative and its member, or its member's landlord with the member's written consent, 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. The substitute amendment defines "project electric account charge" as the charge placed on a member's account by which an electric cooperative may recover costs, including financing costs of qualifying expenses. The written agreement may also provide that project electric account charges will apply to subsequent owners or tenants of the property, except that, if the agreement is with a member who is a tenant, the landlord must also agree and must be given notice, in the agreement, of the landlord's obligation to give notice to future tenants or purchasers (discussed below). If the written agreement between the electric cooperative and its member or member's landlord provides that project electric account charges will apply to subsequent owners or tenants of the property, the electric cooperative may record a notice of electric account charge in the office of the register of deeds for the county in which the property is located. This notice must include certain information, including a statement that the electric account associated with the property is subject to project electric account charges and other information related to these charges. If this notice is recorded and there is a subsequent transfer of ownership or change in tenancy of the property, 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 the electric account associated with leased property is subject to a project electric account charge pursuant to a written agreement between the electric cooperative and its member or member's landlord, the property owner must provide notice of the written agreement and a copy of the notice of electric account charge to 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 and, before entering into a lease for the property, the property owner failed to provide the subsequent lessee with the required notice, the subsequent lessee 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 the substitute amendment, an electric cooperative may contract with any third party to perform, on its behalf, a function permitted of the electric cooperative, including the provision of financing, but the third party must comply with all requirements applicable to the electric cooperative.

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

1 **SECTION 1.** 185.995 of the statutes is created to read:

2 **185.995 Extensions of credit by electric cooperatives for certain**
3 **projects. (1)** In this section:

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

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

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

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

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

17 **(2)** (a) An electric cooperative’s extension of credit to its member or its
18 member’s landlord to finance qualifying expenses is not subject to chs. 421 to 426 if
19 the electric cooperative enters into a written agreement with the member or the

1 member's landlord covering the extension of credit and if the written agreement
2 satisfies all requirements under pars. (b) and (c).

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

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

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

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

13 c. An initial scheduled payment that includes interest charged for a first
14 installment period that is shorter than, or not more than 150 percent longer than,
15 the remainder of the installment periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

