



# GARY TAUCHEN

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TO: Chairman LeMahieu and the Members of the Senate Committee on Elections and Utilities  
FROM: Representative Gary Tauchen  
DATE: October 12, 2017  
RE: SB 281 Testimony

Good morning Chairman LeMahieu and committee members, and thank you for hearing testimony on this important piece of legislation.

The Cooperative Statute Modernization Bill (SB 281 and AB 353) is a bi-partisan piece of legislation intended to expand opportunities for co-ops and their member-owners. This legislation is designed to provide more flexibility, improve resource management, and respond to the financial needs of member-owners.

Chapter 185 has not been significantly updated in nearly 40 years. The changes that are being proposed here provide cooperative members the option of nominating outside directors to serve on their cooperative's board. This idea comes from the cooperative working group and is focused on modernization, broadening expertise, and providing avenues for the next generation of cooperative member owners.

The most important reforms in SB 281 include the following:

- Allows the one cooperative holding company in Wisconsin and its cooperative subsidiaries through articles of incorporation or bylaws to permit members to base voting in whole or part on members' current or recent patronage activity, or members' patronage equity in the co-op, or in combination thereof.
- Allows outside appointed directors – no more than 2 or 20% of directors. This must be approved by a majority of directors.
- Regarding unclaimed property, allows a co-op to either list the names and addresses of the last known owners in a class 1 newspaper notice, or to include a website address in the newspaper notice stating where names and addresses will be found.
- Simplifies electric co-ops existing authority to make consumer loans to members for projects related to wiring safety, energy efficiency, conservation and emergency back-up generation.
- Retains significant consumer protections from the Consumer Act, including caps on fees on electric co-op loans to members.

In closing, the provisions included in the bill would be implemented only with co-op member approval.

Again, I appreciate the opportunity to testify this morning and I look forward to answering any questions you may have.



# PATRICK TESTIN

## STATE SENATOR

**DATE:** October 12, 2017  
**RE:** Testimony on 2017 SB281/AB 353  
**TO:** The Assembly Committee on Elections and Utilities  
**FROM:** Senator Patrick Testin

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Thank you to Chairman LeMahieu and the members of the committee for hearing my testimony on AB 353, which updates the statutes regarding the organization of cooperatives.

Cooperatives have a long and rich history of bringing neighbors together to address a common need. While there are many types of cooperatives – credit unions, dairy, and energy to name a few – they are united by the fact that they are member owned and controlled. This bill, the first major statute revision in over three decades, expands options and opportunities for member-owners of cooperatives. These changes allow cooperatives to maintain their core principles, while giving them the flexibility they need to continue to be successful in an evolving economy.

The ideas behind this legislation were developed over several months by members of the cooperative community. This legislation brings together those ideas as well as examples from other states to move cooperatives forward. Most of these changes have near universal support, so I will take this opportunity to address a few of the changes that this bill makes.

For example, this legislation empowers cooperatives to appoint directors from outside the cooperative, while stipulating that such directors can make up no more than 20% of the board. This allows the cooperative to benefit from the expertise and experience of new voices while retaining the member control that is essential for maintaining the cooperative model.

Additionally, we are providing increased flexibility as it regards to dividend payments. The current eight percent limit on capital stock is arbitrary, and prevents access to capital that could be used by members to better the cooperative.

Since this is the first time these statutes have been addressed in decades, we have tried to craft a bill that accomplishes as much as possible. This bill has many aspects, and Rep. Tauchen and I have been attuned to feedback. Oren Jakobson, one of my constituents,

will be testifying later today. We are working on some modifications to the bill that will take into account his concerns.

I hope you will agree that this bill makes essential changes that update the cooperative statutes while retaining the elements that make the cooperative model unique.



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October 12, 2017

Good morning Mr. Chairman and members of the committee. Thank you for holding this hearing today on Senate Bill 281, an important piece of legislation aimed at broadening options available to cooperative businesses chartered in the state of Wisconsin.

I am Ethan Giebel, Government and Educational Services Director at Cooperative Network. I'm proud of the agricultural and cooperative background that I come from. I grew up outside of Lyndon Station in Juneau County on a modest family farm where we raise cattle, corn, soybeans and alfalfa on about 500 acres. My involvement and passion for production agriculture and farming continues today as my wife and I have worked diligently to purchase farmland of our own along with a small herd of beef cattle. For generations, my family has been members of cooperatives and we realize the value they play in obtaining markets and goods for the farmer and others. We have been members of a myriad of cooperatives such as farm supply, livestock marketing, dairy, Farm Credit, mutual insurance, rural electric, health insurance...you get the idea. My great grandfather was even one of the formative, stock-holding, member-owners of the Sauk County Farmers Union Cooperative that provided him with a way to obtain farm supplies for his farm and business in the 1930s and 40s.

While I'm proud of the associations we've formed with others and the extraordinary history we share together, I realize that what has worked for decades or even functions properly today won't function at the same level in future years.

**Cooperatives are businesses organized by people seeking to meet a need that isn't currently being met.** Cooperatives were created in some instances by farmers who sought to create a better market for their milk, livestock and grain or purchase farm supplies and services at affordable prices. In other instances cooperatives were formed by individuals who wanted to create access to healthcare, financial services, insurance, housing, you name it, the types of businesses that have been organized as cooperatives goes on and on. The cooperative business model is incredibly versatile and allows people from all walks of life the opportunity to take an ownership stake and control of the businesses they rely on and utilize in their daily lives. I'd like to review some of the provisions of SB 281 that have drawn the most attention and share why they are important options for cooperative members and their directors to consider.

#### **Providing Cooperative Holding Companies with Proportional Voting Methods**

This proposal does not seek to change the longstanding one member, one vote practice of traditional cooperatives. It preserves this practice and doesn't go a step further to provide the option for traditional cooperatives to allocate votes based on patronage or equity. What this legislation would do is create the ability for cooperative holding companies to base their voting proportionally on member patronage. This practice is not uncommon and not unheard of. In several other states, cooperatives have chosen to base voting on patronage for decades and it seems to be working well there. In fact, Chapter 185 already allows cooperative businesses whose direct members are cooperatives to use proportional voting. This practice has worked well among federated cooperative systems for many years. Some of the cooperatives that have found the most success in delivering valuable goods and services to meet member needs and return financial gains to members have been organized in federated systems of cooperatives where proportional voting is utilized.

Specifically this provision of the legislation came to be from the urging of the only, singular, cooperative holding company in Wisconsin (Cooperative Resources International or CRI). CRI traces its origins back to the 1920s and is headquartered in Shawano, Wis. CRI has over 13,000 members across the United States and employs over 1,500 people. The organization is composed of three subsidiaries, two operated on a cooperative basis, Genex and AgSource. Genex is a leader in the global dairy and bovine genetics arena. AgSource conducts dairy herd improvement testing as well as soil, water, feed and food testing services. CRI subsidiaries AgSource and Genex are each governed by separate operating boards of directors. Members of both subsidiary cooperatives elect fellow members to serve as delegates. Delegates provide direct input and elect directors to serve on their respective subsidiary boards. The CRI board is comprised of members from both the AgSource and Genex boards of directors.

Proportional voting has been an issue for CRI for several years. While CRI does not have a plan for how they would utilize this change in the state statute, the organization realizes that changes to voting allocation amongst members may be necessary for their cooperative to remain a relevant business form. With large disparities in the amount of patronage between members it has become obvious that one member, one vote is not an equitable voting system for their cooperative and its members. **In this case, fair isn't equal.**

If this legislation were not proposed, CRI could do two things to ensure more equitable member representation:

- First, the business could leave the state of Wisconsin and relocate to another state where proportional voting is permitted by state statute.
- Second, the Cooperative could amend its bylaws to change the definition of a member in their cooperative. Currently a member at Genex is someone who has done \$500 of business in the past fiscal year. Members of AgSource simply have to do business with the cooperative on an annual basis. Member minimum economic participation could be raised to a higher level to ensure that those who are truly utilizing the goods and services of the cooperative are being represented equitably.

Rather than taking those two approaches, CRI would like to have the ability to allocate voting power proportionally to members to ensure equitable representation and remain domiciled here in the state of Wisconsin. Let's not discount the opportunity for cooperative holding companies to base their members voting on patronage. In order for a change to occur at CRI, the cooperatives board and subsidiary boards would have to discuss the specifics of how a patronage based voting system would be arranged and member-elected delegates would have to vote on a bylaw change. A vigorous discussion would take place amongst those members who would be directing the future of their cooperative holding company. Let's let the members decide what is right for their cooperative.

### **Allowing Cooperative Boards to Appoint Outside Directors**

A provision of SB 281 allows for a minority of board seats to be created to utilize the expertise of non-member appointed directors. Cooperatives have boards of directors ranging in size from five to over 20 members. If this provision were adopted by a cooperative, it would allow for one or two maximum appointed directors to serve on cooperative boards, no more than 20 percent of the total seats, whichever is less.

Having a small minority of the board serving as non-member, appointed directors can bring desirable expertise to the board room that members of the cooperative may not have. While a board of directors can already obtain this valuable expertise through advisors, those advisors do not have the same legal

and fiduciary duty to the cooperative that a person who serves in a director role does. We aren't suggesting that there is a legion of current board advisors dispensing ill-informed advice who need to be held accountable. We are suggesting that if you are a person consistently influencing the decision making process in a cooperative's board room, that you should be held accountable. That a person who attends all meetings of the board of directors, dispenses valuable advice and council that cannot be found in the membership of the cooperative, should in fact be held to the same level of accountability as a board director. Board members who have been elected by their fellow member-owners should be able to appoint one or two outside directors to bring valuable expertise to the cooperative if it is the will of the cooperative's membership. Let's let the members of cooperatives decide if they'd like to have appointed directors serve in minority roles on their cooperative boards.

### **Removing the 8 Percent Cap on Dividends**

Removing the arbitrary 8 percent cap on dividends will provide cooperatives in the future with another vehicle to obtain competitive capital. For many years, cooperatives in many forms have needed to borrow money from lending institutions or through the issue of stock to investors in order to construct facilities or purchase assets to achieve their cooperatives mission of member service. Issuing stock to investors as a way to capitalize is extraordinarily common among cooperatives. This practice has been used by small cooperatives start-ups and multi-billion dollar Fortune 100 cooperatives alike.

If cooperative businesses need to borrow money they are going to pay for it through interest payments to a lending institution or dividends to non-voting stockholders. In a rising interest rate environment, it isn't hard to imagine that at some point in the future lending rates at financial institutions could rise above 8 percent. When rates rise higher than 8 percent, it makes the option of issuing non-voting stock less and less attractive and thus cooperatives may be limited to the option of going to a lending institution for the capital they need or paying a lower, less competitive rate on non-voting stock.

At the end of the day, this provision isn't meant to put money in the pockets of investors. This provision was created to maintain parity between the option of issuing non-voting stock or borrowing from a lender for cooperatives seeking capital. In many cases cooperatives would prefer the option of issuing stock as a method of capitalization rather than borrowing from a lending institution. **In some cases, especially in the case of newly formed cooperatives, issuing stock may be the only method of capitalization since the business does not have a sufficient equity position to secure a loan from a lender.**

Some have suggested that lifting the cap on dividends would compromise the tax status of cooperatives who would utilize this practice. This isn't necessarily the case, as we know cooperatives are formed in many sectors of business. Only agricultural cooperatives have to abide by the Federal Capper-Volstead law governing farmer-owner cooperatives. Capper-Volstead states that agricultural cooperatives must comply with one of the following procedures; limiting payment of dividends on stock to 8 percent or allocating voting power on a membership basis (one member, one vote). Let individual cooperatives and their boards of directors decide how to best capitalize their next asset purchase, renovation or expansion project.

This proposed legislation was derived directly from the input of cooperative businesses and has widespread bi-partisan support. In some cases, cooperatives may need these additional provisions that we are advocating for today in order to remain relevant to the members they serve in the future. One size doesn't necessarily fit all in the case of cooperatives. With over 700 cooperatives in Wisconsin in a myriad of industry sectors, we should be able to let members of cooperatives and their duly elected boards of directors to be empowered to make decisions that are best for the interests of their members.



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October 12, 2017

To: Chairman Devin LeMahieu and members of the Senate Committee on Elections and Utilities

From: David Ward, Director of Government Relations & Dairy

Re: 2017 Wisconsin Senate Bill 281

1. Wisconsin is one of the top cooperative states in the country. We have cooperatives that are on the Fortune 500 list and we have two small wine distribution cooperatives (which were mandated by state law). Some of these cooperatives are over 140 years old.
2. All of the cooperatives in Wisconsin were started in order to fill a need in their community or industry. These include farm supply, farm credit, town mutual insurance companies, grocery cooperatives, and the nation's largest organic cooperative. There was a need and members formed a cooperative to meet that need.
3. Cooperatives have been successful in Wisconsin because cooperative members have made the right decisions, which have contributed to the success of their cooperative. SB 281 continues that tradition of allowing members to make the right decisions. We trust the members to do the right thing for their respective cooperatives.
4. As the needs of Wisconsin citizens and cooperative members have changed, so have the size and scope of Wisconsin cooperatives. Some have remained small in both geography and member base, like a town mutual insurance company or a local food cooperative. Some have merged and grown into regional cooperatives that sell Wisconsin products to all 50 states and contribute to Wisconsin's \$21 billion export market. The expertise and financing needs for a Fortune 500 cooperative that is selling products worldwide is a lot different than those of a local food cooperative. SB 281 gives the members some new options to obtain expertise and financing options if members of cooperatives so choose. Members of cooperatives should have the opportunity to choose what's best for their respective cooperatives.
5. The provisions in SB 281 are not new to the cooperative community. They have been adopted by members of cooperatives in other states with no adverse effects, because the members of the cooperative chose to do what was right to meet the members' and the cooperatives' needs.
6. Some have suggested that if a cooperative wants to implement some of the provisions in SB 281 they should just change their business structure and not be a cooperative. Every cooperative should be given the tools it needs to be successful. They should not have to choose between the needs of their cooperative and not being a cooperative.



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Testimony of Beata Wierzba, Wisconsin Electric Cooperative Association  
In support of SB 281  
Senate Committee on Elections and Utilities  
October 12, 2017

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to testify in support of SB 281.

My name is Beata Wierzba, Director of Government Relations for the Wisconsin Electric Cooperative Association, a trade association that represents the interests of all electric cooperatives operating in Wisconsin and has done so for the past 80 years.

Our members provide electric service for nearly 600,000 individuals who primarily live in rural areas.

Joining me today is Jim Hathaway, President and CEO of one of our member co-ops, who will share his opinion about certain portions of the bill.

SB 281 makes changes to Chapter 185 of the Wisconsin's Statutes under which cooperatives are organized. These provisions, modernize several aspects of the law to help electric cooperatives remain valuable, competitive utilities and better serve their members.

Our association was an active participant with the other stakeholders at meetings convened by Cooperative Network to develop consensus positions on the proposed changes affecting all cooperatives.



While several of the provisions within SB 281 will not likely benefit our electric co-ops specifically, we do recognize the importance of all of these provisions for the broader cooperative community.

I would like to address three specific areas of SB 281 that are especially important to our members.

1) *Access to Cooperative Financial Books and Records.*

The bill modifies current law by establishing a minimum period of time for which a co-op would be required to provide a member with access to a cooperative's financial records.

The time period would be the current fiscal year plus the previous three years.

This is similar to what the IRS uses for audits.

We believe this change establishes a reasonable period of time for a member to request such information rather than an un-defined period that currently exists.

Cooperatives like other businesses, have a legal obligation to maintain the privacy and confidentiality of certain records. Access must be for legitimate purpose and information can be provided beyond the limited time-frame at the co-op's discretion or under legal discovery.

Other changes in this section allow the cooperative to recover its reasonable costs for producing these documents.

2) *Addition of Website Address in Newspaper notice.*

Co-ops make every effort to locate all members who are entitled to their allocated equity or patronage capital that is made available for members. If a member can't be reached by mail at their last known address, the co-op publishes an additional notice in the local newspaper.

This bill allows that newspaper notice to include either the names and addresses of the missing members or a website address with a brief description of the notice where additional information can be accessed.

This change provides greater flexibility and recognizes the benefits of utilizing electronic resources for information sharing.

3) *Changes to Existing Lending Authority.*

This provision simplifies an existing electric co-ops' authority to make consumer loans to their members for very specific projects.

The market for these types of loans is extremely narrow and the number of loans sourced would be small, however for an under-served group of members, it would be very beneficial.

These loans are intended for members who may not qualify for low-income weatherization assistance or regular conventional loans. They can also utilize on-bill payment or be invoiced separately.

If an loan is extended to the member, the co-op files a deed notice on the property to note the repayment obligation to the co-op. This notice is not a lien and should not interfere with a mortgage or other secured loans. It is meant to notify perspective buyers of the financial obligation to the co-op.

The loans enable tenants to work with their landlords to add energy efficiency or conservation measures and benefit from these energy improvements.

In conclusion, I would like to thank you for your consideration of SB 281. The Wisconsin Electric Cooperative Association feels that the bill provides many benefits for cooperative members. I would be happy to answer any questions you may have.

**Testimony of James Hathaway**

**Senate Committee on Elections and Utilities**

**October 12, 2007**

Members of the committee, thank you for holding a hearing on SB 281 and for the opportunity to provide my testimony. My name is James Hathaway, General Manager and CEO of Dunn Energy Cooperative, headquartered in Menomonie in northwest Wisconsin. Dunn Energy Cooperative provides electric service in most of Dunn County and parts of Chippewa, Barron, Pierce, Pepin and St Croix counties.

In addition to my position at Dunn Energy Cooperative, I also serve as Chairman of the Wisconsin Electric Cooperative Association Legislative and Regulatory Committee, which guides the association's legislative priorities. In the past, I have served as a director on the Board of the Wisconsin Electric Cooperative Association as well as Cooperative Network.

I support SB 281 and specifically want to address important provisions in the bill with regard to the extension of credit by electric cooperatives.

Under current law, electric co-ops have the authority to provide consumer loans to their members. These loans have generally been business to business type loans. SB 281 utilizes this existing authority to allow "limited lending" to individual members for four types of qualifying projects – wiring safety, energy efficiency, conservation measures and backup generation.

Electric co-ops want to help their members make improvements to their homes that are beneficial by either reducing energy costs, addressing serious safety issues, or improving reliability during prolonged outages.

Often the member that most needs these improvements, may not have the finances, does not qualify for low income assistance programs or would have a difficult obtaining reasonably priced conventional financing. This is precisely where the electric cooperative could assist their member.

## **Energy Efficiency and Conservation**

One of the greatest returns on investment is weatherization improvements. Simply adding more insulation and sealing cracks by windows can drastically reduce energy bills.

When cooperative employees respond to member questions about energy use or conduct energy audits, often they can identify changes that could be made to members' home or businesses.

Many times, the member recognizes the savings that could be realized, but lacks the ability to pay for the investment all at once while covering their bills. Having the ability to offer simplified lending could provide access to much needed financing for members who do not qualify for energy assistance but still may have difficulty paying for efficiency upgrades or weatherization improvements.

### **Here is some background on this idea. The CHERP PROGRAM.**

To address these issues, over six years ago, several co-ops in conjunction with the Wisconsin Electric Cooperative Association (WECA) and the Center on Wisconsin Strategy (COWS) worked on developing a program called the Conservation Home Energy Retrofit Program or CHERP. The purpose of the program was quite simple:

- Assess and improve energy efficiency of cooperative members' homes, farms and businesses.
- Provide a low interest financing option where the energy savings from the improvements would pay for the cost of the improvements.

The program mirrored successful programs offered by electric cooperatives in other states. While we completed development of the various plans and processes to operate a successful program, its roll-out was halted due to the requirements associated with the Wisconsin Consumer Act. Simply stated, we, the electric cooperatives would need to fully implement the regulatory requirements or essentially "get into the banking business" and that was not and is not our intention.

## **Electric Safety**

There are times when our members may need to upgrade their existing electric service for safety reasons. Members may not have the means to pay an electrician the few hundred dollars needed for the work and getting a loan is not an option. What bank would consider lending a few hundred dollars to change wiring?

This is another good example of how a simplified loan process could allow the cooperative to pay a qualified electrician, chosen by the member to upgrade electrical work for safety and finance repayments over time.

## **Self Help**

These loans are intended to provide a service to members that is not generally being offered elsewhere. While the demand is expected to be minimal, the benefit can be considerable for those who can take advantage of this opportunity. This is a self-help option for members and a public good.

## **Key lending provisions of the Bill**

- The authority would only apply to electric cooperative making consumer loans to their members that are generally for the good of the public.
- The bill retains significant consumer lending protections from the Consumer Act, such as caps on certain fees and certain disclosures.
- Includes a new mechanism to allow electric co-ops to provide a notice on the members' loan obligation when a UCC filing is inappropriate. This is not a lien.
- Allows co-ops to take advantage of the administrative efficiencies associated with these simplified lending requirements as simple modifications rather than replacing existing loan documents and billing systems that would not otherwise be possible.

In summary, the Electric Cooperatives of Wisconsin support SB 281. Thank you.

To: Members, Senate Committee on Elections and Utilities  
From: Michael Lensmire, CPA  
Date: October 12, 2017  
Re: Support for SB 281

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Thank you Committee members for accepting my written testimony in support of SB 281, regarding the modernization of the Cooperative statute Chapter 185. I am speaking on my own behalf to support this legislation.

I had the pleasure of participating on the working group in 2015 organized by the Cooperative Network, along with various cooperative representatives from the farm supply, grain marketing, electric, and cattle genetics industries as well as with attorneys involved in the cooperative industry and representatives from the Wisconsin Electric Cooperative Association.

My personal involvement with cooperatives started as child working in a cheese processing cooperative near Marathon City, Wisconsin, which was managed by my grandfather, then my father and uncle. This work allowed me to finance my college education and become a CPA. Over the past 37 years I have been providing assurance, tax and consulting services for the cooperative industry in Wisconsin as well as across the United States.

Over the past decade, I have witnessed the changing landscape of agriculture in Wisconsin. I work with many of the diverse cooperatives that serve a number of different farmers in this state. To keep up with changes in agriculture and demands of farmers, cooperatives have had to keep pace too. Many cooperatives have and will require additional capital and expertise to remain relevant. Therefore, providing cooperatives the ability to attract outside capital by paying competitive dividends on stock, or the option to appoint outside directors with certain expertise, can assist the cooperative to service its members efficiently. In certain situations, allowing proportional voting by cooperative members may be the most fair and equitable form of governance. I have worked with cooperatives in other states that are using this structure very successfully.

Keep in mind, that the provisions in this bill are all optional at the discretion of the cooperative, which would require approval by its members. My guess is that many cooperatives will not adopt some or any of the proposed revisions. However, by including the proposed changes in the current statute, it would provide Wisconsin cooperatives additional tools to evolve and remain competitive for its current and future members.

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September 27, 2017

To: Members of the Senate Committee on Elections & Utilities

From: Peter Carstensen  
Fred W. & Vi Miller Chair in Law Emeritus  
University of Wisconsin Law School

Re: Proposed Revision of Coop Law

**I. The Change in Directors and Elimination of Cap on Payments**

Allowing non-members to be directors of an agricultural cooperative is substantially likely to deprive that cooperative of its ability to claim an exemption from antitrust law under the Capper Volstead Act, 7 USC §§291, 292. I can imagine statutory arguments that might interpret the law to avoid this result, but the general rule is that exemptions are narrowly construed and the statute clearly assumes that all participants in an exempt cooperative are members and farmers.

This exemption is primarily relevant to cases where the conduct by the cooperative would otherwise violate the antitrust law. Most cooperatives that engage in the processing or handling of the commodity (i.e., take title before resale and/or process the commodity into some more finished grocery product) are not at much risk because the usual restraints that such entities impose on their members or customers are lawful under the antitrust laws. Hence, the lack of an exemption is not very important.

If such a cooperative were to agree with other cooperatives about prices or other elements of competition, and if the only purpose or function that agreement were to restrict or eliminate competition (i.e., the parties were not engaged in any sort of a joint productive venture), then the lack of an exemption for the first cooperative would result in the loss of an exemption for the entire agreement.

My assumption is that allowing non-member directors combined with the elimination of the cap on the percentage of payout to stock would allow cooperatives that are engaged in the production/processing of food products to seek out better financing. See, Chap. 185.21 (3)(b) (stock can be sold to anyone except for any stock required of members). As such, this proposal would make sense. But any cooperative and its members that employs this strategy needs to appreciate that it can enhance the risk of antitrust liability under some circumstances (each participant in a violation of the antitrust laws is potentially liable for the entire amount of damages).

So, while I personally believe that cooperatives need better access to finance which often requires that investors have some participation in governance as well as the benefit of higher promised rates, I am concerned about the potential for unexpected antitrust risks to coop members if the full implications of any change in the governance of the cooperative is not made very clear.

A cooperative that does not change its board, will not lose Capper Volstead exemption if it pays more than 8% on its capital, but then it must retain the "one vote" per member rule. The statute gives the option: either a limit on dividends or one vote (see 7 USC §291).

## **II. The Limits on Access to Financial Information**

The proposal to limit member to only three years of financial records combined with the expanded power of the cooperative to deny access raises some serious problems. Governance of cooperatives is particularly difficult. When there are a substantial number of members, the collective action problems are very great. One of the few remaining ways that members can expose and challenge mismanagement is through access to financial records. The issues often require review of many years of such records. To limit access to three years is likely to frustrate



any effort by a member to see whether there is a pattern of abuse. In addition, giving the cooperative the legal right to deny access based on a putative harm to the cooperative means that even the limited available data can legally be denied because a challenge to incumbent management and board might well satisfy a court's idea of harm to the "best interests" of the cooperative.

Cooperatives with large memberships and often hundreds of millions of dollars in assets are already too divorced from their members. This proposal will make the separation of ownership and control even greater. For such cooperatives there should be a new regime of better reporting similar to that required of large corporations with large numbers of shareholders.

### **III. Other Changes**

I have no views on the proposed changes to the rights of electric cooperatives.

The ability to shift a subsidiary cooperative's voting from one member-one vote to a system based on patronage contributions would not, for the reasons set for earlier, deny that cooperative a Capper Volstead exemption provided that it retained the 8% limit on dividends. However, such a right has the potential to permit a few dominant entities to control the overall cooperative. Where that cooperative, in turn, is essential to all members, the result can be some serious risk of exploitation of the majority of members by a minority with enhanced voting power.

I am suspicious that this proposal is aimed at solving some particular control issues in one or two cooperatives because it is limited to holding company cooperatives. This suggests it is special interest legislation in which insiders are trying to gain control over some parts of a cooperative network. Although I have no concrete information to support that supposition, this is the kind of narrowly drafted legislation that should be a concern to legislators.

Senate Bill 281

Statement of Scott Herrick  
to the  
Senate Committee on Elections and Utilities

October 12, 2017

I speak on my own behalf in support of this legislation, which reflects the work of an informal committee of individuals actively involved in the Wisconsin cooperative movement, convened by the Cooperative Network for multiple meetings over several months. I enjoyed working on this committee, as I had also enjoyed working on a similar committee roughly 30 years ago when we last took a big-picture look at Chapter 185, the basic Wisconsin cooperative law. My law firm is active in organizing and representing cooperatives around the state.

I also spoke last month in support of the companion bill, AB 353, and I understand that revisions to the bills are under consideration in response to testimony then by critics of the bills. I have not participated in that process and have not seen any product of it, so I cannot address any changes that may emerge.

Rather than describe the current bills and possible changes to them in detail, I would characterize them in general terms as expanding the options, alternatives, or tools that the organizers and ultimately the members of a cooperative may use to adapt their organization to demands and opportunities that did not occur to us 30 years ago when we updated our beloved statute, let alone 60 or 100 years ago when Wisconsin led the way in facilitating cooperative business organization. In fact, each revision contained in this bill addresses a specific problem or opportunity brought to the committee by an existing Wisconsin cooperative.

But notably, none of these revisions constitutes a mandate or requirement that any existing or future cooperative, or any organizer of new cooperative, do anything. The changes are all choices.

A substantial part of my law practice since 1973 has been devoted to cooperatives, as well as other non-profit and civic organizations. I think I have been just about as committed and focused over the years as anyone in my advocacy on behalf of the cooperative movement, cooperative economic development, and individual client cooperatives. From that perspective I think of this legislation as expanding the potential cooperative economy, facilitating the growth of cooperatives, and in simplest terms adding to the tool-box available to cooperative members, directors, and officers, while preserving the essential core cooperative principles of member control and internal democracy of governance, and not really making anyone do anything.

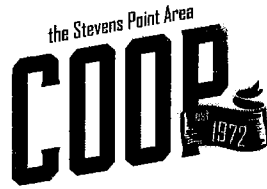
The most pointed criticisms of the bills which I have heard seem to me to reflect a deep and powerful but rather abstract commitment to the word *cooperative*, which we in Wisconsin restrict to Chapter 185 and Chapter 193 entities. These critics wish us to be more restrictive than the proponents of the bills in limiting what other entities may do organizationally and administratively and still be allowed to call themselves coops. The bills, after all, do not require any coop to use any given tool; everything in the bills is subject to member choice and vote. The bills raise technical issues around the edge of the

broader question: what may an association of people choose to do and still be allowed to use the word *Cooperative* to describe their activity? In simpler terms, how big is the Coop tent?

Our economy does not look like it did 30 years ago. Business organizations generally do not look like they did 30 years ago. This legislation will allow cooperatives to move more easily into this emerging economic and organizational world while still retaining their connection to the deep Wisconsin cooperative tradition. The questions raised by critics of the bills reflect serious stresses and concerns arising from the current social and economic environment. In my opinion these bills add to the choices available to cooperatives as they encounter those stresses; these bills adjust the potential size of the cooperative tent, while maintaining the essential elements of economic cooperation and democratic governance at the heart of our state's traditions.

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October 9, 2017

To: Members, Senate Committee on Elections and Utilities

From: Oren Jakobson, Chairperson and Principal Executive Officer

RE: Opposed to SB 281 (Section 9)

I am representing the Stevens Point Area Cooperative in writing in opposition to Section 9 of SB 281 (and AB 353), changes to 185.47 of the statutes. Proponents of the bill have stressed that all of the changes in SB 281 are optional. **Section 9 of SB 281 is not optional and would immediately restrict the rights of cooperative members to access records.** If this bill is intended to merely provide new options for Wisconsin cooperatives then Section 9 should be removed in its entirety.

We are opposed to narrowing the coverage of 185.47 to solely financial records. Currently, 185.47 also covers non-financial records such as meeting minutes, member names and addresses, and other non-financial documents. We are opposed to expanding the ability of cooperative board of directors to deny members access to records. We are opposed to limiting cooperative members rights to access records to only the current and preceding 3 years of financial records. We are opposed to expanding the ability of cooperatives to make information and records inaccessible to members by creating a legal context to label them confidential or private.

The current statute 185.47 requires cooperatives to keep correct and complete financial records as well as the minutes of member, executive committee, and board meetings, and the names and addresses of all members. A member may request access to **any** records pertinent to a specified purpose. A common example of a non-financial record request is when a prospective board member requests a member list prior to a board election. In all but the smallest cooperatives a member running for the board would be at a significant, if not fatal, disadvantage if they were denied access to the member list while their incumbent opponent had full access. Further, members who are trying to decide who to vote for in an upcoming board election should be entitled to read the minutes of board and executive committee meetings to determine whether or not to vote for an incumbent board member. Statute 185.47 should not be narrowed to cover solely financial records.

Under the current statute 185.47, a cooperative board of directors may deny a member's request to access records if the purpose of the request is not directly related to the business of the cooperative **and** the board determines that the purpose is contrary to the interests of the cooperative. The proposed changes would expand the board's right to deny a request by changing the above **and** to **or** and by limiting legitimate purposes to those directly related to the requesting member's interest in the cooperative. A member, and therefore owner, of a cooperative should have the right to review all of the financial records of their cooperative. The proposed language may allow board of directors to deny almost any request. A member

who is concerned about possible mismanagement may request to see the books for the purpose of evaluating the management and board of directors performance. Under current law, a board of directors would have little justification in denying such a request. Under the proposed changes, a board could deny such a request with ease. Cooperative members' rights to access records should not be changed.

The Stevens Point Area Cooperative's entire detailed general ledger for one fiscal year with a little over \$2 million in revenue takes up 1 megabyte of space on a hard drive. So, we can fit 1 million years of financial records on our 1 terabyte \$50 backup hard drive. If a retail grocery store has an average number of transactions on it's books then the entire GDP of the United States (<\$20 trillion) for one year could fit on a 10 terabyte hard drive (\$400 on Amazon). I hope this illustrates the negligible cost of retaining financial records in our modern society. If this bill is intended to modernize the cooperative statutes, then it should require cooperatives to keep all financial records forever. The practical reality is that we already keep all of our financial records. The proposed changes will have little effect on how long cooperatives keep financial records, but will change which records a member has the right to access. We do not think there is any reason to limit members' access to past records and the cost of maintaining past records is cheaper by the day.

Under the current statute 185.47, a member has a right to access all records pertinent to a legitimate purpose. The proposed changes restrict access to any records subject to a legal duty of confidentiality or privacy. These changes would allow cooperative board of directors to conduct business in secret by merely adding a privacy or confidentiality clause to any and all contracts, further reducing the board and management's' accountability to the members. Legal duties to confidentiality and privacy already exist in other law (ie data privacy, attorney client privilege, medical records). The proposed changes expand these restrictions to any legal duty of confidentiality or privacy that a board of directors arbitrarily enters into. These changes would open the door for a significant portion of a cooperative's records to become confidential and out of reach to members. There is no good reason for expanding a cooperative board's ability to deny members access to records.

A member's right to access records is an important aspect of a healthy cooperative where board of directors and their chosen management are held accountable by their patron owners. Any further restriction of a member's right to access records will reduce accountability and increase the chances of mismanagement and more serious malfeasance such as embezzlement. Unlike all other sections of SB 281, Section 9 is not discretionary. The proposed changes to 185.47 of the statutes would reduce members' rights to access records in all Wisconsin cooperatives immediately. **The Stevens Point Area Cooperative is opposed to Section 9 of SB 281 in its entirety.**

Sincerely,

Oren Jakobson  
Chairperson and Principal Executive Officer  
Stevens Point Area Cooperative  
633 2nd St Stevens Point WI 54481  
[orenj@spacoop.com](mailto:orenj@spacoop.com) 920-268-8489

October 12, 2017

To: Members, Senate Elections and Utilities Committee  
From: Lori Meinholz, dairy farmer and co-op member, Middleton, Wis.  
RE: Support for SB 281

Thank you to the committee for hearing SB 281 today. This legislation would make several changes to Chapter 185, which would allow cooperative members to have more choices as to how their member-owned businesses could be operated and governed. One of the provisions of SB 281 that I feel most passionately about is the opportunity for cooperatives chartered in the state of Wisconsin to have the ability to appoint outside directors.

I am a dairy farmer from Middleton, Wis. Our family owns and operates Blue Star Dairy Farms, which was established in 1976 by my mother and father-in-law, who had been dairy farming for thirty years prior to establishing our current farm. Like many farmers, we are members of several cooperatives that serve our farm and others in surrounding communities.

One of these cooperatives is Compeer Financial, a member-owned, federally chartered, Farm Credit cooperative. With over \$18 billion in loan and lease assets, Compeer Financial is one of the largest cooperatives in the Farm Credit System. This nationwide network of lending institutions supports agriculture and rural communities with reliable, consistent credit and financial services. Compeer Financial provides loans, leases, risk management and other services throughout 144 counties in Illinois, Minnesota and Wisconsin. Over 43,000 clients are served by 1,200 team members in Compeer's lending territory.

I've been a member of my local Farm Credit Association for 35 years and was first elected by my fellow member-owners to serve on the board of directors in 1997. I am one of 17 directors who sit on the Compeer Financial board. Our board is composed of 14 elected member-directors and three board-appointed outside directors.

Although the board of a Farm Credit System institution is mostly composed of member-elected directors, federal law requires at least one member to be an outside director. An outside director is appointed by the other board members and may not be a director, officer, employee, agent, or member of any Farm Credit System institution. Furthermore, outside directors in the Farm Credit System cannot be stock holders of the organization.

**Outside directors are valuable because they provide independent and objective perspective to the board's deliberations. They also provide the board with valuable technical expertise. Outside directors with voting rights are far more valuable than an advisor because they are bound to the same legal and fiduciary duties to the cooperative as their fellow directors who are member-owners of the cooperative.**

As an elected cooperative board director, I'm accountable to my fellow member-owners. I've seen firsthand and appreciate the value of ensuring adequate member representation and ensuring that the board has the collective skill set needed to address challenges the cooperative faces, both current and projected. I appreciate the perspectives and contributions of the outside directors that I have worked with over my 20 years of experience on the Compeer Financial board of directors. They have served our board and cooperative well.

Members of cooperatives chartered in Wisconsin should have the ability to choose to benefit from the contributions of outside directors just as members of Farm Credit Associations have for years.



October 10, 2017

To the Senators and Representatives of the State of Wisconsin,

On behalf of the worker-owners of Wisconsin, I am writing to ask the Wisconsin Legislature to preserve the rights and responsibilities of worker cooperatives by opposing the AB 353 and SB 281 bills.

Several provisions of AB 353 and SB 281 violate the cooperative principles of Democratic Member Control and Autonomy and Independence and would *significantly* weaken the high cooperative standards currently in place in Wisconsin law. The statutes governing Wisconsin cooperatives are among the most enabling legal structures for cooperatives in the U.S. and have made Wisconsin a model for legislation across the country—we call for these exemplary statutes to be upheld.

The strength of the existing chapters 185 and 193 is that they allow for a great diversity of organizational structures within the parameters of the seven fundamental cooperative principles. The proposed bills attack these fundamental principles:

**Democratic Control:** The amendment of 185.12(5m)(b) and (c) which allows for voting based on amount of patronage in cooperative holding companies directly contradicts the one member one vote standard of Democratic Member Control. This provision renders cooperative holding companies nearly indistinguishable from investor-owned companies where shareholders' voting power is based on the amount of their investment, and sets a dangerous precedent for other forms of cooperatives whose managers or boards wish to diminish the power of members and increase the power of wealthy patrons and investors.

**Autonomy and Independence:** The creation of 185.31(1)(b) to allow unelected outside directors with voting rights also violates the principle of Democratic Member Control. Removing this democratic right of cooperative members to vote for their directors, and allowing non-members voting privileges on boards of directors fundamentally violates the principle of Autonomy and Independence.

**Limit Dividends:** The repeal of 185.21(2)(c) and amendment to 185.01 (4)(a) that removes the 8% limit on dividends on stock. Maximizing value to current and future members requires that surplus be retained in the members' names and reinvested in the coop and/or paid out as patronage rather than dissipated through exorbitant dividends disbursed to investors, in order to counter the formation of monopolies and to control prices of vital commodities, as established under the Capper-Volstead Act of 1922.

Additionally, a provision of AB 353 is the amendment of 185.47 and 185.72 that strikes the word "books" and restricts member access to cooperative financial records to the 3 fiscal years prior to the request, and that allows the cooperative to charge members for producing this information. This portion of the statute already gives boards of directors the authority to restrict and/or deny requests that are unreasonable, and charging the member a fee to access records that they themselves own is unduly burdensome to the member-owner.

The remaining portions of the bill can truly be characterized as "cooperative modernization" and should move forward on their own as AB 353. Allowing for publication notices via websites in 185.03(10)(d), including all types of assets in 185.38(1)(intro), and allowing electric cooperatives to provide more loan services to their members in 185.995 are all common-sense measures that will strengthen, not weaken coops and their members.

We hope to see you uphold these high standards to ensure proper use of the statute and best service to the State of Wisconsin. Thank you again for your thorough and genuine examination of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Esteban Kelly", with a stylized, cursive script.

Esteban Kelly  
Executive Director  
The U.S. Federation of Worker Cooperatives





International Organisation of  
Industrial and Service Cooperatives  
A Sector of the International  
Co-operative Alliance

To the members of the Wisconsin Senate Committee on Election and Utilities  
To the members of the Wisconsin Assembly Committee on Financial Institutions

Re: Proposed amendments of Wisconsin's Cooperative Statute Chapter 185

October 11, 2017

Dear Members of the Wisconsin Senate and Wisconsin Assembly,  
Dear Members of the Wisconsin Assembly Committee on Financial Institutions,

We have been informed, through our US National member organization, the US Federation of Worker Cooperatives (USFWC), that discussions are in progress to amend Chapter 185 "Cooperatives" of the Wisconsin legislation. We have carefully read the amendment proposals explained at <https://docs.legis.wisconsin.gov/2017/related/proposals/sb281> . As the global organization representing and serving industrial and service cooperatives and as a sectoral organization of the International Cooperative Alliance (ICA), we would like to express our opinion regarding some of the main amendments proposed, and in particular the following:

1. The proposal to allow that voting within a cooperative could take place on the basis of the amount of equity which each member holds, rather than on the democratic member control principle of "one member one vote" (second cooperative principle), would, *per se*, undermine the very essence of what a cooperative is and how it differentiates itself from other types of companies. This distinction goes back to 1844 when the first cooperative standards were established. The very few amendments made to the cooperative standards since 1844 (the last time was at the ICA Manchester Congress in 1995) never put this principle in question, and cooperative legislation around the world upholds it.
2. The proposal to allow for non-members to be part of the board of director of a cooperative would also violate the democratic member control principle, because the board of a cooperative should always be the emanation of its membership; furthermore, it would also violate the fourth cooperative principle of autonomy and independence, because the external board members could have a serious impact on the cooperative membership's autonomy, even if they are a minority.
3. The proposal to repeal the 8% limit on dividend payments contradicts the third cooperative principle of members' economic participation, which states, *inter alia*, that only limited remuneration can be allowed on members' equity within the cooperative; in most countries in the world, the maximum legal level of remuneration of cooperative shares is similar to interests on a long-term deposit account. The reason for this provision is to

avoid that the cooperative be focused on remunerating capital, thus contradicting the very cooperative definition which states that a cooperative is an “autonomous association of persons united voluntarily to meet their economic, social and cultural needs and aspirations” (and not to remunerate the members’ capital).

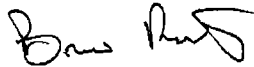
4. The proposal to restrict cooperative members’ access to cooperative records to the 3 fiscal years prior to the request, and to allow the cooperative to charge members for producing such information, is contrary to the “information” component of the fifth cooperative principle of education, training and information. Full and transparent information is an inalienable right of any cooperative member as a co-owner of the cooperative, and is a fundamental condition for members to exercise their democratic control over the cooperative.

We also wish to point out that, in 2002, the US Federal Government formally approved the Promotion of Cooperatives Recommendation 193 of the International Labour Organization (ILO), which contains the international cooperative definition and the cooperative principles mentioned above.

We thus appeal to the members of the Committee on Election and Utilities to seriously consider the above arguments and to drop the corresponding amendment proposals.

The other proposed amendment proposals seem fine to us.

Yours sincerely,



Bruno Roelants  
Secretary General

When I first heard about AB 353 and its companion SB 281 I thought to myself, 'what am I missing?'

My name is Karyn Schauf. My husband and I farm in Barron County and cooperatives are who we have done business with: Ellsworth Creamery Cooperative, Ag Source, NorthStar Cooperative, Accelerated Genetics, GenEx, CRI, Barron Electric Cooperative, United Ag Cooperative and Lakeland Cooperative.

First of all may I begin by saying the provision for electric cooperatives to loan money for energy projects is not something I am opposed to. However the other points I have serious concerns about.

SB281 proposes to allow up to 20% of a cooperative's board seats to be nonmembers, including outside investors! What is to be gained? I have served on many boards that include advisory positions on the board but they serve without a vote. They are compensated by per diem. How would the advice they offer change whether they have a vote or not? What is to be gained? Nothing.

SB281 also proposes to change the one member one vote which is central to what a cooperative is. Changing to a vote based on patronage is completely opposite cooperative principals – a different business structure all together. What is there to be gained? Again, nothing but what is lost is the opportunity for many – such as myself joining together as one for a common benefit.

This bill is one that has not come from the grassroots membership of cooperatives, but rather from the top. I cannot see that the membership would ever be in favor of these changes and in fact I have sought out cooperative board members, presidents and CEO's and they have all echoed those same sentiments.

I would propose however that the trust between local coops and their umbrella organization, Cooperative Network has been damaged with Cooperative Network's effort to push this bill.

There is still today a place, a need for cooperatives. The current structure has and continues to work very well and serves thousands of members who became a part of a cooperative just because of what it offers. That original cooperative structure needs to be maintained. If one cooperative finds itself not able to function under the original structure, I would suggest they consider restructuring and NOT change what continues to work for so many others.

In answer to my opening question 'what am I missing?'....

I am missing what this bill is missing – A VALID REASON TO EVEN BE CONSIDERED

And for that reason I urge you NOT support SB 281.

Thank you very much.

Karyn Schauf  
1659 10 ½ St.  
Barron, WI 54812  
Barron County

Senate Hearing 10-12-2017

I would like to thank you for the opportunity to testify on behalf of myself as a cooperative member as well as board member of Cooperative Resources international. My wife Karen and I are 5<sup>th</sup> generation dairy producers operating an expanded dairy in Fond du Lac County, we are currently in transition to the next generation as our daughter Jamie and her husband David Zappa recently joined the family business.

Our family has always been involved in cooperatives in fact my grandfather was a founding member of a cooperative in the 1940's. My father was also heavily involved in the cooperative system by serving on local and national cooperative boards.

I have been involved with the cooperative system thru out my entire career, I have served on the Alto Dairy Cooperative board until its sale to Saputo Cheese USA. I am also active over 15 years with the Wisconsin Farm Bureau; just recently serving as Chairman of the Dairy Policy Committee. My longest tenure is with Cooperative Resources International serving on the Genex and CRI boards of directors. Over the last 28 years while serving with the cooperative I have witnessed many avenues of growth; Thru out the history of CRI there has been over 26 mergers, acquisitions and consolidations within the US and many new International businesses formed. CRI has transitioned into a Global business and so have their members and customers.

In 2013 a few years after CRI transitioned to a national membership our delegates who represent the membership thru an elected process held discussion on cooperative law and equity-based versus member-based voting. At that time there were five states (Texas, Oregon, Washington, Kansas and Iowa) that provided for an optional equity-based voting. Those member delegates felt that the proportional voting concept is important to how a cooperative business operates. Remember that you do not need 100% of the delegates or membership with patronage voting. The membership can select by percentage of members or some other combination and obtain the desired result for membership structure within each cooperatives business model. Some of the delegates felt that production agriculture will demand this change if cooperatives are to remain relevant.

At CRI we have a system in place that takes grass roots input from the members. We meet with the elected delegates and alternates at delegate listening and training sessions. We record their input and make management decisions from that input. During our annual meeting the elected delegates meet in caucus with their director. Those high-level meetings allow for more personal interaction between management, directors and elected member delegates. There are also delegate newsletters sent to the delegate that provide in depth news on the happenings within the cooperative. We feel that we have a great system to gain input from the membership at CRI.

When this option of proportional voting becomes law CRI fully understand that it would take a member delegate vote to have this implemented; but feel strongly that options should be available if the membership desires to implement a voting change. We understand that there are many traditional cooperatives here in Wisconsin, but feel that we should have the ability to make the necessary changes thru a member vote to drive the success of our cooperative. Being a Holding Cooperative, CRI is unique, we have the size and scope of a modern cooperative business model and diversity of the membership base. There needs to be an avenue for the systematic strategic growth of cooperatives in the system.

While I am not saying that CRI will implement this change having the option to do so gives us flexibility. CRI has taken an aggressive approach in business development and expects there will be future expectations from our membership while maintaining the cooperative principals of governance.

As cooperatives here in Wisconsin strive to remain competitive and keep up with the corporate business models we need to continually explore other avenues. Many if not all cooperatives are competing in the highly competitive global markets. The boards and managements that govern cooperatives today require a higher level of expertise. Broad based expertise in strategic planning, finance and marketing are key attributes that make a cooperative successful. Having the ability to nominate and appoint a director that would be able to compliment the elected board of directors is extremely important. While not all cooperative would require this unique level of leadership, some would benefit, again depending on the need. It is a voluntary approach to board and management decision making. The option to include these directors with a 20 % of the total board seat requirement or no more than two individuals should not be detrimental to the members fulfilling their fiduciary responsibilities it should enhance it. If the cooperative structure or the competitiveness in the market place demand a different approach to board leadership then there should be structure to allow this to happen. The member owners of the cooperative deserve options in governance structure.

While many cooperatives struggle to maintain consistent profit margins or even could pay an equity distribution you may ask why, to change the cap on dividend payouts. Again, it comes down to the options that are available to the member directors and management teams. There will be a time in which cooperatives will be in the position to distribute a higher dividend, create preferred stock options or generate a permanent equity pool for future growth. Having the option to pay at different dividend rates could attract many members of various business sizes. Cooperative growth comes in many forms. Growth from within, thru acquisitions and mergers with cooperatives and or private businesses and corporations all require different approaches within their business environments. Having the ability to pay competitive rates allows the boards and management teams the flexibility to remain competitive. Remember that this is a voluntary action that requires board action to execute and it is always up to the discretion of the board of directors.

I believe that the changes we are discussing today will enhance the abilities of cooperatives in the state of Wisconsin to remain competitive. We need to be thinking about our future and what changes we need to make that will allow the cooperative world to persevere in these turbulent times of world economics.

Remember the proposed changes are strictly options for the boards and management teams to use not mandatory. As directors of a cooperative it would not be ethical to put into place unlawful policies or bylaw change recommendations that would limit the growth potential and member ownership. Strategic plans sometimes call for different approaches. Those risk reward management decisions will make a difference and if we are afraid of change we will never achieve success.

Thank you for allowing me to speak here today.

October 11, 2017

Dear Members of the Senate Committee on Elections and Utilities:

I am a dairy farmer in Merrill, Wisconsin. On our farm, we milk 450 cows and employ 20 full and part time individuals. I am also a supervisor on the Lincoln County Board.

I am a member of Heartland Co-op, Genex, Agsource, Provision Partners, Larsen Co-op, Equity Livestock, and CoVantage Credit Union. I also serve as a voting delegate for Genex, meaning that I vote on behalf of those members at the annual CRI delegate meeting. I am also supposed to be a liaison between the cooperative and my fellow cooperative members in the local area. I take this responsibility seriously, and stay informed by attending the fall delegate meeting where delegates are encouraged to express our opinions and share our ideas with directors and Genex staff.

When I learned about the changes proposed in this bill, and specifically those related to my own cooperative CRI, I was surprised and disappointed. I have been a voting delegate for this cooperative for several years and there has never been any discussion of a proposal like this within the cooperative. If there had been such a discussion, I would have expressed the opinion that the principle of one member one vote is absolutely sacred and should under no circumstances be changed.

Since CRI did not take the opportunity to have this discussion with its members directly, I will share my opinions about this bill with you, the members of the legislature who are tasked with reviewing this bill, Senate Bill 281. This bill gets it wrong. First of all the Electric Co-op portion of this bill has nothing to do with the rest of it, and with all due respect the combination is dirty pool. Furthermore, motivation for changing the rules regarding who can be on a cooperative board and the 8% investment cap are coming from outside the cooperatives not from within.

Coops are important to rural communities because they help dollars bounce around locally rather than leave the area as they often do when big corporations are our only options for purchasing inputs. I think it's also important to remember how cooperatives help feed the very human desires of ownership and community.

Coops are different than other types of business entities in that they are democracy in action. A cooperatives fortunes are tied to the fortunes of its patrons and vice versa. That difference is important to our farm for the same reasons it was important to the founders of cooperatives who have been around for decades. We need inputs in good times and bad and we need markets in good times and bad. Cooperatives help keep us at least a few degrees removed from the chaos of Wall Street and the Chicago Mercantile Exchange. Wisconsin has a strong Cooperative tradition and that tradition has helped our State do better than some other areas during times of recession.

There is no reason to change the rules governing cooperatives in our state. The changes proposed with this legislation will erode the basic foundation of what a co-op is. These changes would no doubt have a negative effect on the equity, morale and social fabric of our rural communities.

Sincerely,  
Hans Breitenmoser Jr.  
Merrill, WI (Lincoln County)

October 11, 2017

Dear Senate Committee on Elections and Utilities:

I am a member of a successful six-year old farm cooperative based in one of the poorest counties of the state in Northern Wisconsin. The most important thing keeping the coop together? Trust. Trust in board members to make wise decisions in spite of the financial and social headwinds in rural America.

These nurturing coop laws you are looking to meddle with protect co-ops and co-op members from predatory investing and outsider politics. These are our co-ops, financially strapped but successful. I trust my co-op board members but I do not trust the proposed changes to coop laws contained in Senate Bill 281/Assembly Bill 353.

John Adams  
Washburn, WI  
Bayfield County

October 11, 2017

Dear Members of the Senate Committee on Elections and Utilities:

As a northwestern Wisconsin dairy and grain farmer, it's not often that I make the journey down to the Capitol. I usually reserve my fall trip to Madison as a chance to enjoy World Dairy Expo, but on Sept. 27 I visited to urge your counterparts on the Assembly Committee on Financial Institutions to vote against several disturbing proposed changes to cooperative law, and I am urging you to do the same.

I represent other farmers on cooperative boards of directors, including the Equity Livestock Sales Association, River Country Cooperative, and Eagle Point Mutual Insurance.

As a farmer I depend on cooperatives to market my milk through Foremost Farms Co-op, my cattle through Equity Livestock Co-op and my grain through River Country Co-op.

I buy all my feed, seed, fuel and fertilizer through River Country Co-op, my electricity through Chippewa Valley Electric Co-op, my property insurance through a town Mutual insurance company (Eagle Point Mutual), my financing through a Farm Credit co-op, and, well, you get the idea.

The cooperative principles are embedded in the Wisconsin ag economy. Each one of these co-ops holds an annual meeting where interested members can review financials and elect members to the board of directors. It's simple. One member, one vote. But now, I fear that principle is in jeopardy.

I've represented farmers on the Equity Livestock Board of Directors since 2001 and currently serve as the board's vice president. After reviewing the proposed changes, we have voted to reject efforts to eliminate one member, one vote. We furthermore support keeping the requirement that voting board members have a financial interest in the co-op. Advisory outside board members is fine, but they should not control members' equity, and therefore may not vote.

Additionally, we support the 8 percent cap on investment return – which would be eliminated under this bill. Co-ops are not organized like corporations. But at the end of the year co-ops enjoy the choice of either paying income taxes or allocating patronage to members who then pay income taxes on the earnings. Single taxation. If Wisconsin approves this bill, which also seeks to allow co-ops like Cooperative Resource International to morph into a more corporate structure, why shouldn't those entities face the same tax codes as corporations? This bill could jeopardize a key financial advantage of cooperatives over corporations, the principle of single taxation.

SB 281 could also cause members to lose the right to review cooperative records that are more than three years old, including, but not limited to, board meeting minutes, financial records, and possibly even voting records.



I'm also a director on the board of River Country Co-op. Our five-member board of directors is a diverse group that guides a very successful farm supply co-op. Last year our Board President Lee Jensen, who milks 900 cows, stepped down and our new President Randy Mahr took over. He milks 65 cows. One member, one vote seems to be working well in this co-op. The point is this is a classic story of something that's not broken that the government is attempting to fix. I think both parties can agree on what results this often generates.

On Sept. 13, CHS, a multi-state farm supply co-op, held a director update meeting for Wisconsin's many smaller Cenex local supply co-ops. Cooperative Network gave a presentation that included this bill. My table included directors from three other Cenex co-ops in my area. In the break following the presentation, I asked what they thought of the bill. They opposed it, with the most memorable quote being "This will be the death of the small farmer."

Creators of the bill 'conveniently' tacked on a number of rural electric co-op provisions, luring legislators to sign on in a show of support for cooperatives. Once this bill is defeated, I hope a new bill emerges focusing on the electric co-ops, which are doing a great job. Their portion deserves a clean bill.

*Les Danielson  
dairy and grain farmer from Cadott, Wisconsin  
Chippewa County*

October 11, 2017

We, Gerald, Charlotte, and Jeffrey Croes are members of J-C Croes Farm LLC and Croes Udder Dairy LLC. We milk 110 cows, raise 100 hogs farrow to finish, and raise the crops for our animals. We each have a say in how our farms are run. Likewise, we are also members of Ellsworth Co-op Creamery, St. Croix Electric Cooperative, NorthStar Cooperative, Ag Partners Co-op, and Westconsin Credit Union. Gerald has been on the board of directors of Ellsworth Creamery for 8 years. All of these cooperatives have been very successful.

When we heard about the changes proposed to cooperative law in Senate bill 281 and Assembly Bill 353, we were angered that the government would try to fix something that is not broken. The proposed bills would change the basic principle of what a cooperative is...one member, one vote.

We attend the annual meetings of our cooperatives where each member has a vote to elect the board of directors and advise the board. We have pride when our cooperative is successful.

Co-ops are important to rural communities because it brings neighbors together to work for a common cause, making sure the co-op operates successfully so that in turn the members are successful. The members take pride in an organization that they are part of and that benefits them. Voting members should have a financial interest in the co-op. Outsiders may advise, but not have a vote.

We agree with the rural electric provision of the bill, but that should be a separate bill, not included with the rest of the bill, which should be voted down.

Co-ops are different than other forms of business in that there is pride in every member being a part owner of the co-op, compared to individuals working for a large corporation where they could be replaced easily. In co-ops the members share in the success of the co-op in the form of patronage dividends, whereas in corporations, a person feels as if they are working for the benefit of the owner.

Please urge our senators to support cooperatives as they were intended to be, do not change the laws of cooperatives.

Gerald, Charlotte, and Jeffrey Croes  
2264 200th Street  
Deer Park, WI 54007

AB 353 and SB281

- My wife, Nancy, and I farm in Manitowoc County on three farms around Maribel, Kellnersville, and Francis Creek. We raise Holstein steers, custom raise lambs, hogs, and broilers and cash crop grain and some commercial vegetables.
- We belong to Country Visions Cooperative from which we purchase all our seed, fertilizers, chemicals, fuel, gasoline, liquid petroleum, various services and sundry supplies and to which we sell our grain. We also have sold grain to United Cooperative. I am treasurer and am on the board and finance committee of the Wisconsin Food Hub Cooperative.

We oppose this bill for the following reasons:

- The bill undermines the fundamental nature and the legal and economic justification of cooperatives.
- The federal treatment of cooperatives under the Capper-Volstead Act of 1922 excluded cooperatives, that are mostly agriculture in nature and engaged in marketing for their members, from anti-trust issues because the act seeks to protect the interests of member-owned associations of producers against mega-business suppliers and processors.
- Cooperatives were formed as a member-owned, member-driven, and member-benefiting organizational structure, business or non-business.
- The essence of a cooperative is smaller producers or members organize together while retaining their individual operations and managed businesses on an equal basis against larger suppliers, processors, and buyers. Together the members are better able to survive in their business rather than each by him/herself.
- For a cooperative to add non-member board members who have no economic interest in the cooperative is contrary to the nature of the cooperative. The addition of non-member input can be accomplished by hiring outside consultants to provide the same value and meet the fundamental nature of cooperative management.
- If outside directors were to be accepted, to which we are opposed, they must have the approval of more than two-thirds of the members.
- If cooperatives are seeking to add non-member board members and to

allow a certain amount of capital infusion to meet the needs for technical modernization and marketing potential, they need not allow for equity investment. Many cooperatives, both local and national, satisfy this need by issuing non-voting preferred shares and debentures. Some have issued billions of dollars of debentures and preferred shares to meet their financing need. Outside non-member equity investment should not be allowed and is unnecessary.

- Bonding together, where each member has the same voting power as any other member, facilitates the defense of smaller operations (e.g., small and mid-size farmers) against larger operations that helps level the playing field and avoids favoritism that equates power with wealth.
- If people wish to make patronage amounts the basis of voting rights, which this bill proposes, they should de-cooperatize the association and become a conventional stock-equity based corporate organization. To allow for voting power to be based on equity in or patronage distribution from the cooperative is to accelerate the concentration of power and wealth in that industry and undermine the viability of smaller members. This is contrary to the concept of the cooperative.
- As member-owners of a cooperative, the members need to continue to have the right to view financial records older than three years in order to make comparative judgement on the path of performance and management of their cooperative. Because the members are the owners of the cooperative association, they have the right to view any and all financial records of their operation.
- The requirement in these bills that more than two-thirds of members must approve the disposition of any assets of the cooperative is inappropriate because cooperatives that trade in the market on their own account (e.g., grain, a non-fixed asset) need to liquidate positions and sell commodities in the market as a regular course of their business. The two-thirds approval of the members (one-member-one-vote) for disposition of fixed assets should remain.

W. Michael Slattery  
9704 Pautz Rd  
Maribel, WI 54227  
920-863-2996

October 12, 2017

Dear Senator Nass and Wisconsin Senate,

In 1968 my husband and I and our young family moved to a farm in Jefferson County. We quickly joined an agricultural cooperative. Over the years we have continued to be co-op members. For young people getting a start in farming in a new community, being members of a co-op was a very important part of our ability to prosper in our agricultural endeavors. Wisconsin has led the nation in progressive co-op establishment for many years.

I feel very strongly that "one member one vote" regardless of the number of shares held is basic to a strong agricultural economy. I am opposed to the legislation you are proposing which would put an end to that.

I also oppose placing non-members on the boards of co-operatives. Co-op members understand best what is good for their organization.

My children and grandchildren should have the same opportunities to be part of a vibrant agricultural economy that my generation had, and co-ops which give strength to individual members, no matter the size of their operation, is basic to that opportunity.

Please vote **NO** on SB 281.

Weenonah Brattset  
N2437 Brattset Lane  
Jefferson, WI 53549

October 12, 2017

Dear Senator Nass and Wisconsin Senate,

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Please vote **NO** on SB 281.

Weenonah Brattset  
N2437 Brattset Lane  
Jefferson, WI 53549

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**FIVE GREEN ACRES, LLC**

(608) 335-9445  
fivegreenacres@gmail.com

605 McMillan Rd  
Poynette, WI 53955

October 11, 2017

Wisconsin State Senate  
State Capitol  
Madison, WI

Dear Members of the Wisconsin State Senate:

I am writing to provide you with some thoughts surrounding my opposition of Senate Bill 281, concerning proposed changes to the legal definition and requirements of cooperatives in the State of Wisconsin. As proud and active members of Wisconsin Farmers' Union, as well as long-time members of a local foods cooperative and wholesale cooperative for the crops we grow on our family farm, I can tell you that there are a host of reasons that have led my wife and me to our strong belief in and adamant support for the cooperative model.

Our vision for our family farm is unique and ever-changing, in order to adapt to environmental and economic challenges, as well as to provide our customers with the products and services they seek, while keeping sharp focus on environmental sustainability. Our membership in the Wisconsin Farmers' Union co-op has afforded us access to many great family farm entrepreneurs who are all navigating similar challenges along with some that are unique to their specific farming enterprise. Diversity of opinion and equal opportunity among members to speak and be heard benefits everyone who chooses to be a member, and together, we are all better equipped to devise strategies to survive and grow in times where the future is very uncertain.

Because all voices are equal in the co-op model, we can always be certain that all ideas can be discussed; that no ideas are silenced. Senate Bill 281 serves to alter the co-op model that gives voice to all members as equals, regardless of where their farm or enterprise presently stands on the continuum of financial success, patronage or tenure. To focus the an organization's time, energy and resources on the initiatives of those who presently spend more, buy more or have more ensures that those members will continue their success, often at the expense of those with a smaller voice.

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If a member of an existing cooperative seeks a product, service or counsel that they are unable to acquire within their co-op, it seems to me that they may benefit by looking elsewhere, outside of the co-op model, to achieve what they desire. Reducing the volume of one's voice to make another voice louder runs directly counter to what the co-op model was created for in the first place.

If the members of Cooperative Resources International have found themselves to be hampered by the cooperative model and have determined that another business classification would better enable them to fulfill their strategies, my advice is simple: Let them discuss it among their members at the next annual meeting. Let them present and hear all arguments for and against the proposed changes, and let them vote. One member, one vote.

It does not seem prudent to change the definitions and rules that define a co-op for the benefit of one organization that wishes to retain the advantages they have enjoyed while all their members were equal. If a size medium no longer fits, it might be time to get a large, not to make the size medium larger.

Thank you for considering my thoughts on this important matter.

Sincerely,

Andrew R. Borchardt

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October 11, 2017

Dear members of the Senate Committee on Elections and Utilities,

I am writing in objection to Senate Bill 281 / Assembly Bill 353, which I firmly believe to be a blatant effort to undermine the principles of actually being a Cooperative and to disenfranchise the many voices who make up a Cooperative for the behest and benefit of a few. It is my opinion those advocating for SB281/AB353 on behalf of their Cooperatives are betraying the many hardworking people who built these cooperatives, along with the purposes they were intended for when being founded. Cooperatives should be run democratically for the benefit of all their members – anything else and it becomes a corporation just looking for tax loopholes and investment capital but lacking the financial transparency to hold such an organization accountable.

I also feel Cooperative Network is trying to paint themselves as a representative of all cooperatives in the state of Wisconsin, whereas I am familiar with quite a number of member-owned dairy cooperatives in Wisconsin that are not members of Cooperative Network.

As for myself as a dairy farmer I am only a member of 2 cooperatives. I am no longer a member of CRI due to their treatment of their smaller members who are contributing members but on a smaller scale – members that helped make that cooperative what it is today.

Wisconsin Agriculture with emphasis on the state's dairy industry is in a pivotal time. Owner-operator farmers are being cast aside in favor of big ag and policies that support overproduction, creating a less than stable market for those who are not to blame for the agriculture economic instability. The cooperatives they built should work for all their members equally, not solely on how much they bring to the table that year as at some point. I have little doubt that if SB281 / AB353 passes the smaller hardworking owner-operator farmers that built our state, and the reason many of these cooperatives were formed in the first place, will be seen as nothing more than inconsequential or even a burden. There will be nothing to protect these farmers as their voice and their vote within the cooperative they have entrusted will be lost.

Nial Murray  
Prairie Farm, Wisconsin  
Barron County

WI Senate Committee on Elections and Utilities

October 11, 2017

Dear Senate Committee,

Our Southeastern Wisconsin Farmers Union Chapter urges you to vote no to Senate Bill 281. As sustainable farmers, most of our chapter members' work relies heavily on our Coops. We feel strongly that each person should have a vote no matter how vested they are in the coop & that coop boards should be coop members, advisors to the boards should remain as non-voting professional advisors.

Our current coop laws have been working well for many, many years. If this business model is not working well for a certain, international cooperative I believe they should find a new business structure. By changing the rules that govern our Coops we will begin the degradation of our coops that provide much assistance to our in need rural communities!

I am in favor of the changes for electrical cooperatives and would be supportive of them if they were introduced as a separate, stand-alone bill.

Thank you for your consideration to our concerns, please vote no to Senate Bill 281.

Kirsten Jurcek

President, Wisconsin Farmers Union Southeast Chapter  
Farmer & Agricultural Educator  
N2437 Brattset Lane  
Jefferson, WI 53549

**Senate Bill 281- Testimony regarding the proposed legislation to decimate the intent of cooperatives**

October 12, 2017

As Vice President of South Central Farmers Union, representing over 200 members in Rock, Green and Lafayette Counties; as former President of Sauk County Farmers Union; and having served on the advisory board for two years in setting up the Wisconsin Food Hub Cooperative, I register my opposition to the passage of Senate Bill 281 and its Assembly counterpart, AB 383.

Having lived in several rural communities in southwest Wisconsin, the presence of a member held cooperative locally serves residents and provides healthy competition and markets for farmers. Before I retired from farming, I personally was a member of Westby Coop Credit Union, Select Sires, Equity, Livestock, Foremost Farms, Premier Coop, and my husband was an alternate to the board of Select Sires.

If an investor wants to invest in a business, there are many opportunities to do so. The Cooperative is not one of them. One member=one vote, and the ability of any member to run for a seat on a cooperative board is an outgrowth of the 100 year history of farm economics in the state of Wisconsin.

The rural electrical and telecommunications coops should be able to conduct the business of its members without restrictions of how much credit they extend to farmers producing renewable energy on their farms. They should be as fully funded as corporate entities for rural broadband expansion. A separate resolution should be put forward ensuring that member controlled cooperatives operate on a level playing field, without the influence of outside investors with an agenda outside the purpose of cooperative principles.

We don't have to follow what any other state, or outside interest, has decided for our cooperatives. We, the cooperative members, are perfectly capable of running successful cooperative businesses that understand and meet the needs of its members.

Pat Skogen

1913 12th Ave, Monroe, WI 53566

608-393-6109 [pskogen@live.com](mailto:pskogen@live.com)

Formerly Reeson Family Farm, Loganville, WI

October 12, 2017

My name is Patty Edelburg. I am a dairy farmer in central Wisconsin. I am also a member of 11 co-ops throughout Wisconsin, and a former board member.

I am writing today to encourage you to vote against Assembly Bill 353 along with its companion Senate Bill 281. These bills would allow co-ops to make certain changes to their by-laws that are currently prohibited under state law.

As a farmer I depend on cooperatives that my husband and I are members of to market our grain in the fall and provide feed throughout the year. Most of our feed is purchased through supply coops. Most of the semen we use is purchased through supply cooperatives. We market our cows through Equity coop. The electricity we use is delivered through an electric coop. The bed I sleep on every night and the furniture in our living room was even purchased through a furniture cooperative we are members of. And all of those cooperatives, as an owner-member, I have a choice to make my voice heard on many decisions.

The cooperative principles have been a very large and necessary part of the agriculture industry in Wisconsin. The principles have provided members a voice in how their products are marketed and purchased. Unfortunately, those very principles are being challenged with these 2 bills.

In the current law, cooperative members make up the board of directors. Those board members are voted in by other members, their peers. Co-ops have the ability to appoint or hire advisors without giving them a vote on the board. Many co-ops already do this. It would take a by-law change and a vote from the membership. There is no need for a statutory change. Why does a cooperative need to appoint non-members, including outside investors, to serve on its board? Once we allow outside investors to start managing cooperatives we own, if that is how the membership wants it, they should restructure into a corporation. There is no reason outside investors should be allowed to have control over members equity decisions. Voting members should have a financial interest in the cooperative. I urge you to vote against the provision that would allow up to 20% of the cooperative's board seats to be turned over to non-members, including outside investors.

On another point, three years is not a large enough "snapshot" of time for members to review cooperative records. Most cooperatives have records that go back farther than three years, and with today's technology, they should be able to produce those records without any difficulty. I have sat on cooperative boards where we have gone back a number of years to review similar financial decisions, or for new board members to understand why by-laws or financial decisions were made. I urge you to not allow this change.

Additionally, patronage voting goes against the cooperative principles of one member - one vote, and democratic member control. It would significantly diminish the voting power of small

to average-sized farmers. These are the farmers who are already struggling financially, and may decide not to spend as much with their co-op. my husband and I milk 120 cows, my one neighbor milks 1000, another neighbor milks 400, another neighbor milks 65. We should all be allowed to have a single vote and furthermore know that our vote matters. By changing the cooperative history of one member one vote, we again are turning farmer owned cooperatives into farmer owned corporations where the only way your voice will be heard is if you purchase more "stock" in that company. This is one change I adamantly oppose. By taking away the one member one vote rule, you are taking away the core principle that cooperatives are based on.

The authors of this bill realized when they wrote it that the Senate Elections and Utilities Committee could not vote no on the provision that allows electric co-ops to invest more in energy efficiency projects , most of us support it as well. So by including the electric provisions to this bill, it would be hard to vote against it. However, I urge the committee to consider running that provision separately from the other provisions as a clean bill.

I appreciate your time and consideration to keep the coop laws intact.

Sincerely

Patty Edelburg

Dairy Farmer, Co-op member and Co-op owner

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October 12, 2017

To: Chairman Devin LeMahieu and members of the Senate Committee on Elections and Utilities

From: David P. Swanson  
Partner Dorsey & Whitney LLP Minneapolis

Re: 2017 Wisconsin Senate Bill 281

I am a cooperative lawyer based in Minneapolis. I have been fortunate to have worked with cooperatives almost exclusively for 34 years. I served on Cooperative Network's Chapter 185 Review Committee. I have worked with coops in many sectors, including rural electric coops, agriculture coops, natural foods and other consumer coops, purchasing coops for independent retailers and distributors, worker coops, and cooperative finance institutions (credit unions and cooperative lenders).

I have worked with several Wisconsin domiciled coops and become familiar with Chapter 185 and Chapter 193. I have worked with cooperatives governed by state coop laws in dozens of other states.

I would like to offer several comments on Senate Bill 281:

1. I believe all of the changes made to Chapter 185 in Senate Bill 281 are reasonable and appropriate. Cooperatives are different than "profit-taking" entities because their mission is to serve their members, not only to maximize profits. But they are nevertheless business enterprises that need to maintain solid financial metrics to serve their members optimally. The changes in Senate Bill 281 may help Wisconsin cooperatives maintain solid financial metrics, but they will not change the fact that these cooperatives still exist to serve their members.
2. As for the authority to have outside (i.e., non-member) directors, I would stress that the amendment in Senate Bill 281 (Section 6) does not mandate outside directors. It simply authorizes outside directors and it limits the number to no more than 20% of the total number of directors.

My experience is that cooperatives do not often have outside directors, and those that do have only a small percentage of outside directors. But the comments I have heard from those that do have outside directors is almost universally positive. For some types of cooperatives, particularly wholesale cooperatives and those formed to serve businesses or provide financial services, outside directors can be very useful and help the cooperative serve its member mission better because of the expertise it brings to the board's decision-making. Cooperatives that do not want outside directors are still able to dictate this in their articles and bylaws.

3. Section 4 of Senate Bill 281 eliminates the 8% cap on dividends. Many (I would say most) state cooperative statutes do not contain an 8% or any other cap on dividends. I believe this is appropriate because sometimes cooperative members can benefit greatly from establishing permanent equity capital – usually preferred stock – that carries a fixed

dividend but no voting rights. CHS, Land O' Lakes and Organic Valley have all used preferred stock to strengthen their balance sheets and enhance their ability to serve members; all have limited their dividends to 8%, but there could be market conditions that make preferred shares unavailable with an 8% cap.

An 8% dividend cap applies to some cooperatives that depend on Capper-Volstead protections. It does not apply to most cooperatives. Applying the 8% cap to Wisconsin cooperatives of all kinds only has the potential effect of limiting the tools available to some cooperatives to serve its members in changing market conditions. Eliminating the 8% cap does not, however, prevent cooperatives from limiting dividends in their own articles and bylaws or board policies.

I would also point out that even if an 8% cap on dividends remains in place, nothing in Chapter 185 prevents a cooperative from incurring debt at rates higher than 8%; incurring debt at over 8% when credit market conditions dictate higher rates does not mean that cooperatives are functioning less and less like cooperatives. Eliminating a cap on dividends should not be viewed any differently.

4. Section 3 of Senate Bill 281 allows a cooperative holding company and its subsidiaries to base voting on equity or patronage activity. This is a very limited exception that does not change the fact that currently, in Section 185.12(2), any "federated" cooperative is permitted to base voting on a patronage basis. It is simply not accurate to say Senate Bill 281 kills the one member one vote rule for cooperatives.

Respectfully Submitted,

Dave Swanson



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## Chapter 185 Revisions: Frequently Asked Questions

### Who supports this legislation?

The Cooperative Statute Modernization Bill (AB 353 and SB 281) has bipartisan support from 26 members of the Wisconsin Assembly and seven Wisconsin Senators.

### What is the benefit to having appointed directors?

If Chapter 185 is updated, cooperative members would be enabled to have the option of nominating appointed directors to serve on their cooperative's board. During formative discussions of this bill, the Cooperative Network-led working group noted that allowing for an appointed director role lets the individual be fully engaged in decision making, broadens the areas of expertise available to the board and will perhaps even encourage young members to experience how the board operates.

### What if we don't want appointed directors?

The proposed changes only increase the number of options available to cooperative members. Every cooperative would still need member action to enact a bylaw revision allowing for these provisions.

### Who does the patronage voting piece apply to?

The bill addresses allowing cooperative holding companies to have the option of voting based on patronage. This is not a new concept as a number of other states have followed this model for decades. This update only applies to cooperative holding companies, of which there is only one in Wisconsin: Cooperative Resources International. The holding company would have to receive approval from their member delegates in order to implement this change. To be clear, this provision will not be an option for traditionally organized cooperatives, only cooperative holding companies such as Cooperative Resources International (CRI).

### What is a Cooperative Holding Company? How does it differ from a "regular"

**cooperative?** There is only one Cooperative Holding Company in Wisconsin: Cooperative Resources International (CRI). This means CRI is the mother cooperative to three unique subsidiaries – AgSource, GENEX and MOFA GLOBAL. This organizational structure enables CRI to effectively and efficiently provide services that benefit the individual subsidiaries. As far as the structure, the assets and the balance sheet are held at CRI while the management is at the subsidiary level.

### How will these changes to Chapter 185 impact me and my cooperative? (Specifically for those members of GENEX and AgSource.)

This legislation broadens possibilities and enables cooperatives, like GENEX and AgSource to have future options allowing cooperatives to remain strong in a rapidly changing world. When this statute passes, we don't expect immediate impact for members of GENEX and AgSource. It simply allows cooperative members the opportunity to discuss future governance options.





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### **Were members involved in the discussion?**

GENEX and AgSource delegates discussed cooperative law and equity-based versus member-based voting at delegate meetings across the U.S. in 2013. At that time, five states (Texas, Oregon, Washington, Kansas and Iowa) provided for optional equity-based voting.

### **Why is the proportional voting change important to how the business is run? What will happen if the amendments don't pass?**

The CRI and subsidiary Boards have discussed this issue. Some feel production agriculture will demand this change in time if cooperatives are to remain relevant. Further discussions amongst member-owners would be implemented before a member vote is taken.

### **Why would co-ops want to remove the 8 percent cap on dividends?**

In today's low interest rate environment, it is hard to imagine a time when any business would have to pay over 8 percent on borrowed capital. This forward-looking change would allow co-ops to pay a competitive rate on dividends in a different interest rate environment.

Many types of co-ops have used stock issuance as a way to capitalize during a start-up or expansion to serve their members, rather than borrowing from a financial institution. Furthermore, removing the cap on dividends applies to all membership capital, thus allowing co-ops to give higher profits back to the member-owners they serve in good years, rather than being forced to keep earnings.

Lastly, it is important to note that agricultural producer cooperatives must comply with the Capper-Volstead Act, an act of Congress which requires producer-owned co-ops to conform with one or both of the following requirements:

1. No member of an association is allowed more than one vote because of the amount of stock or membership capital allowed.
2. The association does not pay dividends on stock or membership capital in excess of 8 percent per year.

### **Is my co-op still going to notify me about unclaimed capital credits?**

Yes. Co-ops make every effort to locate all members who are entitled to their allocated equity that is made available. If a member can't be reached by mail at their last known address, the co-op posts an additional notice in the newspaper.

This bill still requires a co-op to provide a notice in the newspaper. It will allow a co-op to either provide the list of names and addresses in the newspaper or provide additional information in the newspaper on where to access this information electronically. This change recognizes the benefits to members and the co-op of utilizing electronic resources for information sharing.



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**Why would a cooperative want to limit access to financial records to co-op members?**

Access by members to cooperative financial records must be for legitimate purposes. The bill modifies existing law by establishing a reasonable period of time for members to request co-op financial records. This minimum time-frame is the current fiscal year plus the three previous years. This timeframe is generally the same time period used by the IRS for conducting an audit.

These changes also recognize that co-ops have a legal obligation to maintain the privacy and confidentiality of certain records, including but not limited to personal information protected under Health Insurance Portability and Accountability Act.

The intent of these changes is to establish a reasonable timeframe that cooperatives must provide financial records to members when requested. Cooperatives can provide more information beyond the time period at their discretion and persons can still exercise their legal rights of discovery. Currently, the timeframe is open-ended and theoretically, a member could request all available information, which is an unreasonable request that other members of the co-op would pay for.

**How are financial institutions impacted by the electric cooperative lending provision?**

The impact to financial institutions will either be negligible or potentially creates a new opportunity. Currently, the market for these types of loans is extremely narrow yet very beneficial for those who may not have an established credit history. However, if such loans became popular this legislation allows electric co-ops to partner with financial institutions.

Electric co-ops have existing authority to provide consumer loans to their members. Under the bill, this authority would be simplified for four types of loans. The bill retains relevant Consumer Act protections for co-op members.

For these types of loans, an electric co-op may file a deed notice for the associated property. The notice is not a lien and is meant to notify prospective buyers of a financial obligation to the co-op. The notice also provides a mechanism for such things as home insulation or caulk that a UCC filing would not cover.

**Are electric co-ops trying to bring in a new revenue stream with the lending provision?**

These loans are intended to provide a service to members that is not generally being offered due to the considerable regulatory requirements. While the demand is expected to be minimal, the benefit can be considerable for those who take advantage of the opportunity.

Interest rates are anticipated to be low, the demand small, and margins that would be minimal. These loans are generally intended as a self-help option for members with lower incomes where the improvements also benefit the public good. They will help members' cash position, address safety concerns, and provide backup power when prolonged outages occur.



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**What is the purpose of electric cooperatives being able to lend to their members?**

Electric co-ops want to help their members make improvements that are beneficial by either reducing energy costs, addressing serious safety concerns, or improving reliability during prolonged outages. Most of these loans will help members who do not qualify for low income assistance programs and would have difficulty obtaining reasonably priced conventional financing.

The provisions in the bill use the existing authority to offer consumer loans, under a simplified process, for four qualifying projects - wiring safety, energy efficiency, conservation and back up generation.

For example, one of the greatest returns on investment is weatherization improvements. Simply adding more insulation and sealing cracks can drastically reduce energy bills. Loans for insulation and sealing activities cannot be secured by a UCC filing because it will remain with the property and can't be recovered like a vehicle can.

In addition, an electric co-op would be able to use an existing lending agreement with modifications, and avoid costly upgrades to their IT and billing platforms.



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# KATHLEEN VINEHOUT

## STATE SENATOR

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### Testimony in opposition of SB 281- The Organization and Operation of Cooperatives and Extension of Credits by Electric Cooperatives

Senate Committee on Elections and Utilities

Thursday, October 12<sup>th</sup>, 2017

I thank Chairperson LeMahieu and committee members for the opportunity to testify on Senate Bill 281, which alters Chapter 185 regarding the organization of cooperatives.

As an organic farmer and member of many cooperatives, I understand need and history of cooperatives for agricultural and rural communities. Cooperatives provide a crucial link between community members and access to markets like feed and livestock. These service organizations are guided by the principles of putting the welfare of their members first; not the bottom-line of the cooperative.

Earlier this year, our office requested a legislative council memo describing Senate Bill 281 and comparing the bill with certain provisions of current law. The memo clarified the concerns I had about this bill.

Currently, Wisconsin law provides a broad framework base upon fundamental cooperative principles. This framework allows cooperatives flexibility to establish unique organizational structures based on their needs.

The bill before this committee goes too far and makes changes in the section of the law related to cooperatives that does not keep line with basic cooperative principles. For instance, the bill allows outside directors to have the same voting rights as member directors, which violates the principle of "the farmer as the company." The bill does not allow cooperative members to look at financial records over three years old, again, violating the principle of "the farmer as the company."

Furthermore, Senate Bill 281 allows a cooperative member's voting power to be based on a member's current or recent patronage activity, which violates the principle of "one member, one vote." This change could potentially open the door for cooperatives to treat members differently based upon the size of their farm operations.

Under current law, any dividend on a cooperative stock is prohibited from exceeding 8% per year. Under this bill, cooperatives are allowed to issue stock with more than an 8% rate of return. Cooperatives are in the business of serving the needs of its members, not providing large dividends to cooperative stock holders.

I am supportive of changes to allow electric companies to assist consumers with small loans to replace aging power poles and energy efficiency equipment.

Overall, after meeting with constituents and analyzing the bill language, I do not believe that parts of Senate Bill 281 have the welfare of cooperative members at heart. The process by which these changes

came about was not conducted in a manner that included all or a majority of organizations with cooperative members; nor was the information about what this bill accomplishes fully shared with members of the Assembly and Senate who chose to join as co-sponsors.

If a cooperative wants to become a corporation, put that issue to a member vote. Chapter 185 exists for a reason: to protect a cooperative business model—let keep it that way.

I urge you to vote against Senate Bill 281 in its current form. Thank you.