



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0502/1
ARG:jld

2017 ASSEMBLY BILL 353

May 31, 2017 - Introduced by Representatives TAUCHEN, NERISON, E. BROOKS, NOVAK, CONSIDINE, TUSLER, KULP, BERNIER, QUINN, PETRYK, MEYERS, RIPP, TRANEL, BALLWEG, KRUG, EDMING, SUMMERFIELD, VRUWINK, DOYLE, KOLSTE, VANDERMEER, MURSAU, PRONSHINSKE and GOYKE, cosponsored by Senators TESTIN, COWLES, BEWLEY, MOULTON, HARS DORF, RINGHAND, MARKLEIN and VINEHOUT. Referred to Committee on Financial Institutions.

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

Analysis by the Legislative Reference Bureau

This bill makes various changes related to the organization and operation of cooperatives and includes provisions applicable to extensions of credit by electric cooperatives.

Under current law, a cooperative may be formed by filing articles of incorporation with the Department of Financial Institutions. A cooperative is organized and owned by its members and managed by a board of directors. Directors are elected by the members and each director must be a member or, if the member is an entity and not an individual, a representative of that member.

This bill allows a cooperative to have a director that is not a member or member representative (outside director) if the total number of outside directors does not exceed two outside directors or 20 percent of all directors, whichever is less. A person may not serve as an outside director on the board unless a majority of directors who are not outside directors votes to approve the person as a director.

Current law generally provides that only cooperative members may vote at member meetings and each member has one vote, regardless of the member's degree

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of financial interest in the cooperative. Because a cooperative is formed to provide services to its members, current law also requires a cooperative's board of directors, at least once each year, to distribute the cooperative's proceeds, after deducting various costs, other distributions, and reserves, to members based on their patronage, which means business done with the cooperative. Some or all of this distribution may be retained by the cooperative for future capital needs and credited to a patronage equity account of the member.

This bill allows a cooperative holding company and its cooperative subsidiaries to base members' voting power in whole or in part on members' current or recent patronage activity, or on members' patronage equity in the cooperative, or on a combination of both. The bill defines a "cooperative holding company" as a cooperative that owns or controls subsidiaries operating on a cooperative basis as the primary part of their business and activities.

Current law allows a cooperative to be organized with or without capital stock, but if the cooperative issues stock any dividend on the stock cannot exceed 8 percent per year. Current law also defines a "foreign cooperative" as a cooperative that is incorporated under another state's cooperative law, that has members residing within this state, and that meets certain operating requirements, including that no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns or the foreign cooperative does not pay dividends on stock or membership capital in excess of 8 percent per year.

This bill removes the 8 percent dividend limit for domestic cooperatives and removes the reference to an 8 percent dividend in the definition of "foreign cooperative."

Current law requires a cooperative to keep correct and complete financial records. Upon giving at least one week's written notice stating the purpose for the examination, a member may examine, at a reasonable time and for a proper purpose, any financial records pertinent to the purpose specified in the notice. The board of directors may deny a request to examine financial records if the board determines that the purpose is not directly related to the business or affairs of the cooperative and is contrary to the best interests of the cooperative.

Under this bill, a member's right to examine a cooperative's financial records is limited to financial records covering the current or preceding three fiscal years. The bill also specifies that this right of examination is subject to any legal duty to preserve confidentiality or protect privacy. The bill further provides that the board of directors may deny a request to examine financial records if the board determines that the purpose is not directly related to the requester's interest as a member in the business or affairs of the cooperative or is otherwise contrary to the best interests of the cooperative. Under the bill, the cooperative may condition examination of financial records on the member reimbursing the cooperative for the reasonable costs to produce the financial records and make requested copies of them.

Under current law, a cooperative's board of directors may not dispose of all or substantially all of the cooperative's fixed assets without the members' authorization. The members may authorize the disposition of all or substantially all

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of a cooperative's fixed assets if appropriate notice is given and the disposition is approved by a two-thirds vote at the members' meeting.

This bill applies this provision to all assets, not just fixed assets. Also under the bill, a cooperative's board of directors may not, without the members' authorization, dispose of a cooperative's assets 1) other than in the ordinary course of business; or 2) in a manner that jeopardizes the purpose for which the cooperative was created or its financial vitality. The members may authorize the disposition under such circumstances if appropriate notice is given and the disposition is approved by a two-thirds vote at the members' meeting.

Under current law, a cooperative may effect the forfeiture to the cooperative of unclaimed assets if certain conditions are met, including that notice is mailed to the last-known address of each owner and published once in a newspaper. This bill provides that the notice published in the newspaper may consist of either the owner's name and address or an Internet site address where this information is posted, together with a brief description of the reason for the notice.

Under this bill, an electric cooperative's extension of credit to its member or its member's landlord to finance qualifying expenses is not subject to most provisions of the Wisconsin Consumer Act if the electric cooperative enters into a written agreement with the member or the member's landlord covering the extension of credit and if the written agreement satisfies certain requirements, discussed below. The bill defines "electric cooperative" as a cooperative that carries on the business of generating, transmitting, or distributing electric energy to its members at wholesale or retail. The bill defines "qualifying expenses" as expenses associated with any project relating to energy efficiency, energy conservation, electric safety, or emergency back-up generation (qualifying project). The written agreement between the electric cooperative and the member or the member's landlord may not contain any provision that does any of the following: 1) with exceptions, requires a schedule of payments under which any one payment is not substantially equal to all other payments or under which the intervals between any consecutive payments differ substantially; 2) requires payment of a late charge for an installment payment that is ten or fewer days late or a late charge that is greater than 1 percent of the unpaid amount of the installment; 3) allows a charge of more than \$30 for a dishonored check; 4) requires the party who does not prevail in a court proceeding or other dispute to pay the attorney fees of the prevailing party; or 5) authorizes the electric cooperative to confess judgment against the member or member's landlord in any action arising under the agreement. The written agreement must include a provision that grants to the member or member's landlord the right to prepay, without penalty, the unpaid balance of the extension of credit.

The bill also includes provisions relating to the electric cooperative's right to recover costs associated with a qualifying project against the borrower and against other persons. An electric cooperative that extends credit to its member or its member's landlord to finance qualifying expenses may recover the costs, including financing costs and repayment installments, as line item charges on its electric bills issued to the member or member's landlord. The written agreement between the electric cooperative and its member, or its member's landlord with the member's

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written consent, may provide that costs, including financing costs and installment repayments, must be recovered as a project electric account charge on the account of the member associated with the property where the qualifying project will be completed. The bill defines “project electric account charge” as the charge placed on a member’s account by which an electric cooperative may recover costs, including financing costs of qualifying expenses. The written agreement may also provide that project electric account charges will apply to subsequent owners or tenants of the property, except that, if the agreement is with a member who is a tenant, the landlord must also agree and must be given notice, in the agreement, of the landlord’s obligation to give notice to future tenants or purchasers (discussed below). If the written agreement between the electric cooperative and its member or member’s landlord provides that project electric account charges will apply to subsequent owners or tenants of the property, the electric cooperative may record a notice of electric account charge in the office of the register of deeds for the county in which the property is located. This notice must include certain information, including a statement that the electric account associated with the property is subject to project electric account charges and other information related to these charges. If this notice is recorded and there is a subsequent transfer of ownership or change in tenancy of the property, the electric cooperative may recover the project electric account charge from the transferee or tenant as line item charges on the transferee or tenant’s electric bills. If the electric account associated with leased property is subject to a project electric account charge pursuant to a written agreement between the electric cooperative and its member or member’s landlord, the property owner must provide notice of the written agreement and a copy of the notice of electric account charge to each subsequent lessee of the property responsible for paying the electric bills issued by the electric cooperative. If a subsequent lessee is responsible for payment of charges and, before entering into a lease for the property, the property owner failed to provide the subsequent lessee with the required notice, the subsequent lessee may deduct from the lessee’s rent, for no more than one-half of the term of the lease, the amount of the charges for which the subsequent lessee is responsible.

Under the bill, an electric cooperative may contract with any third party to perform, on its behalf, a function permitted of the electric cooperative, including the provision of financing, but the third party must comply with all requirements applicable to the electric cooperative.

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

1 **SECTION 1.** 185.01 (4) (a) of the statutes is amended to read:
2 185.01 (4) (a) ~~Either no~~ No member of the foreign cooperative who is an
3 individual is allowed more than one vote because of the amount of stock or

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1 membership capital the member owns therein, ~~or the foreign cooperative does not~~
2 ~~pay dividends on stock or membership capital in excess of 8 percent per year; and~~

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

4 185.03 **(10)** (d) The notice under par. (b) is mailed to the last-known address
5 of each owner, and the name and address of each owner to whom notice is mailed or
6 an Internet site address where this information is posted, together with a brief
7 description of the reason for the notice, is published as a class 1 notice under ch. 985
8 on or before the date of mailing in a newspaper published in the municipality
9 containing the service area of the cooperative.

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

11 185.12 **(5m)** (a) In this subsection, “cooperative holding company” means a
12 cooperative that owns or controls subsidiaries operating on a cooperative basis as the
13 primary part of their business and activities.

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

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

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

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

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1 185.31 (1) (a) All powers of the cooperative shall be exercised by or under
2 authority of, and the business and affairs of a cooperative shall be managed under
3 the direction of, the board, except as otherwise provided in this chapter. ~~Every~~
4 Except as provided in par. (b), every director shall be a member or a representative
5 of a member ~~who~~ that is other than a natural person. The bylaws shall prescribe any
6 other qualifications for directors and may provide that directors be from specified
7 districts.

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

9 185.31 (1) (b) 1. In this paragraph, “outside director” means a director who is
10 neither a member nor a representative of a member that is other than a natural
11 person.

12 2. Subject to subds. 3. and 4., the bylaws may allow for not more than 2 outside
13 directors.

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

16 4. No person may serve as an outside director unless a majority of directors who
17 are not outside directors votes to approve the person as a director. The board may
18 not nominate outside directors.

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

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

22 185.38 (1) (intro.) Except as authorized by the members, the board may not
23 dispose of all or substantially all of a cooperative’s ~~fixed~~ assets. At any meeting the
24 members may authorize the disposition of all or substantially all of a cooperative’s
25 ~~fixed~~ assets if:

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

2 185.38 **(1m)** (a) Except as authorized by the members, the board may not
3 dispose of a cooperative's assets under any of the following circumstances:

4 1. Other than in the ordinary course of business.

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

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

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

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

14 **SECTION 9.** 185.47 of the statutes is amended to read:

15 **185.47 ~~Books and Financial~~ records; penalty for refusal to produce. (1)**

16 A cooperative shall keep correct and complete ~~books and~~ financial records of account,
17 and shall also keep minutes of the proceedings of meetings of its members, board, and
18 executive committee. The cooperative shall keep at its principal office records of the
19 names and addresses of all members and stockholders with the amount of stock held
20 by each, and of ownership of equity interests. At any reasonable time, any member
21 or stockholder, or his or her agent or attorney, upon written notice stating the
22 purposes thereof, delivered or sent to the cooperative at least one week in advance,
23 may examine for a proper purpose any ~~books or~~ of the cooperative's financial records
24 covering the current or preceding 3 fiscal years and that are pertinent to the purpose
25 specified in the notice, subject to any legal duty to preserve confidentiality or protect

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1 privacy. The board may deny a request to examine ~~books and~~ financial records if the
2 board determines that the purpose is not directly related to the requester's interest
3 as a member or stockholder in the business or affairs of the cooperative and or is
4 otherwise contrary to the best interests of the cooperative. The cooperative may
5 condition examination of financial records on the member or stockholder
6 reimbursing the cooperative for the reasonable costs to produce the financial records
7 and make requested copies of them.

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

16 (3) Subject to the time, notice, and purpose requirements of sub. (1), a member
17 or stockholder of a cooperative may examine the ~~books and~~ financial records covering
18 the current or preceding 3 fiscal years of any other cooperative or other person that
19 is a wholly owned subsidiary of the cooperative or in which the cooperative owns a
20 controlling interest.

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

22 185.72 (1) (c) The cooperative failed to comply with a court order for the
23 production of ~~books,~~ financial records or other documents of the cooperative as
24 provided in s. 185.47.

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

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

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

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

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

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

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

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

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

23 1. Requires a schedule of payments under which any one payment is not
24 substantially equal to all other payments or under which the intervals between any

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1 consecutive payments differ substantially. This subdivision does not apply to any of
2 the following:

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

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

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

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

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

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

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

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

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

23 5. Authorizes the electric cooperative to confess judgment against the member
24 or member's landlord in any action arising under the agreement or otherwise

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1 requires the member or member's landlord to provide a power of attorney or other
2 authorization for the electric cooperative to confess judgment.

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

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

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

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

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

22 **(4)** If a written agreement under sub. (2) (a) provides that project electric
23 account charges will apply to subsequent account holders, the electric cooperative
24 may record a written notice of electric account charge in the office of the register of
25 deeds for the county in which the property associated with the electric account is

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1 located. The notice of electric account charge shall not constitute a lien on the
2 property. The notice of electric account charge shall include at least all of the
3 following:

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

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

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

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

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

18 **(6)** If the electric account associated with leased property is subject to a project
19 electric account charge pursuant to a written agreement under sub. (2), the property
20 owner shall provide notice of the written agreement and a copy of the notice of electric
21 account charge to each subsequent lessee of the property responsible for paying the
22 electric bills issued by the electric cooperative. If a subsequent lessee is responsible
23 for payment of charges under this subsection and, before entering into a lease for the
24 property, the property owner failed to provide the subsequent lessee with notice as
25 required by this subsection, the subsequent lessee may deduct from the lessee's rent,

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1 for no more than one-half of the term of the lease, the amount of the charges for which
2 the subsequent lessee is responsible under this subsection.

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

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

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

14 (END)