



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2017 Assembly Bill 353</b>	<b>Assembly Amendments 1, 2, and 3</b>
<i>Memo published: November 14, 2017</i>	<i>Contact: Zach Ramirez, Staff Attorney</i>

### **2017 ASSEMBLY BILL 353**

2017 Assembly Bill 353 (“the bill”) modifies current law with regard to the organization and operation of cooperatives. Assembly Amendment 1 (“Amendment 1”) modifies the provisions of the bill relating to the rights of cooperative members and stockholders to access certain cooperative records. Assembly Amendment 2 (“Amendment 2”) modifies the provisions of the bill relating to the qualifications of cooperative directors. Assembly Amendment 3 (“Amendment 3”) modifies the provisions of the bill relating to extensions of credit by electric cooperatives.

### **ASSEMBLY AMENDMENT 1**

**Current law** provides that any cooperative member or stockholder, upon written notice stating the purposes thereof, may examine for a proper purpose “any books or records” of the cooperative pertinent to the purpose specified in the notice.

**The bill** instead provides that any cooperative member or stockholder, upon written notice stating the purposes thereof, may examine for a proper purpose “any of the cooperative’s financial records covering the current or preceding 3 fiscal years” that are pertinent to the purpose specified in the notice.

**Amendment 1** instead provides that any cooperative member or stockholder, upon written notice stating the purposes thereof may examine for a proper purpose: (1) “any of the cooperative’s records” that are pertinent to the purpose specified in the notice; and (2) “any of the cooperative’s financial books covering the current or preceding 5 fiscal years” that are pertinent to the purpose specified in the notice.

## ASSEMBLY AMENDMENT 2

Under **current law**, a cooperative's directors must be elected by the cooperative's members, and each director must be a member of the cooperative, or, in the case of an organization that is a member of a cooperative, a representative of that organization.

**The bill** allows a cooperative to have a specified number of "outside directors," which are defined as directors who are neither members nor representatives of an organization that is a member of the cooperative. The bill prohibits a cooperative board from nominating outside directors, and it requires an outside director to be approved by a majority vote of directors who are not outside directors.

**Amendment 2** deletes the provision of the bill that prohibits a cooperative board from nominating outside directors. It also modifies the provision of the bill that requires an outside director to be approved by a majority vote of directors who are not outside directors. It instead provides that no person may serve as an outside director unless a majority of the members or delegates voting or a majority of directors who are not outside directors, as specified in the cooperative's bylaws, votes to approve the person as a director.

## ASSEMBLY AMENDMENT 3

**The bill** provides that a cooperative's extension of credit to a member or a member's landlord is generally exempt from the requirements of the Wisconsin Consumer Act, if the credit is extended for certain purposes and the cooperative and the borrower enter into a written agreement that satisfies certain requirements.

The bill provides that a written agreement may require repayments to be recovered as "project electric account charges" which are charges placed on the account of the member associated with the property where the project funded by the credit will be completed.

An agreement may provide that the charges will apply to subsequent owners or tenants of a property, and a cooperative may collect such charges from a subsequent owner or tenant, if certain requirements are met, including that a written notice of the account charge must be properly recorded with the office of the register of deeds before the date on which the ownership transfers or the tenancy changes.

The bill provides that, if an electric account associated with **leased** property is subject to such a charge, the property owner must provide notice of the agreement to each **subsequent lessee** of the property. If the property owner fails to provide the notice before entering into a lease, the subsequent lessee may deduct from the rent the lessee pays to the property owner the amount of the charges for up to one-half of the term of the lease.

**Amendment 3** requires a property owner to provide notice of the charges to a purchaser of a property. Specifically, the bill provides that, if an electric account associated with a property is subject to such a charge, the property owner must provide notice of the agreement to **the purchaser or** each subsequent lessee of the property.

Amendment 3 also modifies the provisions of the bill that specify the repercussions for a property owner failing to provide proper notice to a subsequent tenant, and it adds repercussions for a property owner failing to provide proper notice to a purchaser.

If a property owner fails to provide the notice before entering into a lease, the subsequent lessee may **void the lease and recover any deposits made with respect to the lease** or deduct from the rent the lessee pays to the property owner the amount of the charges for which the lessee is responsible, for up to one-half of the term of the lease.

If a property owner fails to provide the notice to a purchaser before entering into an agreement for the sale of the property, the purchaser may void the contract with the property owner and recover any deposits made with respect to the contract.

### **BILL HISTORY**

Representative Tauchen offered Assembly Amendments 1 and 2 on October 20, 2017. On November 1, 2017, the Assembly Committee on Financial Institutions recommended adoption of both amendments on votes of Ayes, 14; Noes, 0. On the same day, the committee recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 2.

Representative Tauchen offered Assembly Amendment 3 on November 6, 2017. On November 7, 2017, the Assembly adopted Assembly Amendments, 1, 2, and 3. On the same day, the Assembly passed the bill, as amended, on a vote of Ayes, 74; Noes, 18; Paired, 3; and the Senate concurred in the bill, as amended and passed by the Assembly.

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