

Assembly Bill 353

Statement of Scott Herrick  
to the  
Assembly Committee on Financial Institutions

September 27, 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. Rather than describe this current set of revisions in detail, I would characterize them all 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 of cooperative members and officers, while preserving the essential core cooperative principles of member control and internal democracy of governance, and not really making anyone do anything.

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.

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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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September 27, 2017

To: Members, Assembly Financial Institutions Committee  
From: John Manske, Senior Government Affairs Director and  
David Ward, Director of Government Relations and Dairy  
RE: Support for AB 353

Thank you Chairman Katsma and members of the committee for scheduling this hearing on AB 353, which provides several changes to Chapter 185, the primary statute governing cooperatives that are organized in Wisconsin. Also, thank you to the authors, Rep. Tauchen and Sen. Testin, and all the Republicans and Democrats who have co-sponsored this series of modest changes to the statute. The legislation reflects the first significant proposed changes to Chapter 185 in over 30 years.

I am John Manske, Senior Government Affairs Director at Cooperative Network. I am joined today by David Ward, our Director of Government Relations and Dairy. Cooperative Network is committed to protecting and promoting Minnesota's and Wisconsin's cooperative businesses and their shared cooperative principles. We are the largest statewide co-op trade association in the United States, representing a diverse and active group of more than 400 members.

In 2015, a group of Cooperative Network's member cooperatives, with the help of several attorneys who work with cooperatives, came together for a series of meetings to discuss potential changes to Chapter 185. Included were representatives of the Wisconsin Electric Cooperative Association (WECA). The recommendations of this working group of cooperators were included in the legislation that was drafted and which is before you today.

**It must be stressed that all the provisions found in AB 353 and its companion SB 281 are subject to the individual decision of each cooperative as to whether they will be adopted.** This is in keeping with the value of "member-owned and member-controlled" that defines the cooperative difference from other business models.

Those opposing several provisions found in AB 353 would deny cooperative members and their elected board members an opportunity to vote to add the perspectives of appointed directors at a time when the complexity of financial decision-making may most demand another set of background or knowledge in the boardroom. There is an obvious reason why the federally chartered and regulated farm credit system provides for appointed directors. Generally, the financial experts who are such a valuable part of farm credit association boards are appointed outside, not elected members. Under AB 353, the appointed director(s) would always remain in the minority of any board, if a cooperative's member-owners voted to enact this provision.

The provision allowing patronage-based voting only applies to cooperative holding companies, of which there is only one in the state: Cooperative Resources International (CRI). Although their delegates have been informed about this potential change, it would still require a vote of CRI's member-delegates to move forward with a patronage activity based or patronage equity based voting system.

The diversity of cooperatives in Wisconsin and the competitive environment that they find themselves in today would point in the direction that a rich cooperative history alone will not ensure success in today's economy. Whether that means consideration of paying more than 8 percent dividends on stock or membership capital or encouraging electric cooperatives to make consumer loans to their members for important projects such as wiring safety or emergency backup generation, we trust members of cooperatives to make intelligent decisions that will help the cooperative fulfill their mission of service to their members and the communities in which they operate. We encourage you to trust your constituents who are members of cooperatives, and do so by supporting AB 353.

Thank you again for the hearing on AB 353. I welcome any questions you might have on this legislation.

To: Members of the Assembly Committee on Financial Institutions

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.

# International Statement of Cooperative Identity

Adopted by the International Cooperative Alliance on the occasion of its 100<sup>th</sup> anniversary in 1995.

**Cooperative values:** Cooperatives are based on the values of **self-help, self-responsibility, democracy, equality, equity and solidarity**. In the tradition of their founders, cooperative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

**Cooperative Principles:** The cooperative principles are guidelines by which cooperatives put their values into practice.

**1. Voluntary and Open Membership:** Cooperatives are voluntary organizations open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

**2. Democratic Member Control:** Cooperatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.

**3. Member Economic Participation:** Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

**4. Autonomy and Independence:** Cooperatives are autonomous, self-help organizations controlled by their members. If they enter into agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

**5. Education, Training and Information:** Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of cooperation.

**6. Co-operation among Co-operatives:** Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

**7. Concern for Community:** Cooperatives work for the sustainable development of their communities through policies approved by their members.



**Wisconsin  
Electric  
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Testimony of Beata Wierzba, Wisconsin Electric Cooperative Association  
In support of AB 353  
Assembly Committee on Financial Institutions  
September 27, 2017

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to testify in support of AB 353.

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

With me is Larry Dokkestul, President and CEO of one of our member co-ops, who will share his experience regarding the loan provisions in the bill as well as Tim Clay, VP of Operations with WECA, who is very familiar with this proposal and can assist me with answering the difficult questions you may have.

AB 353 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 other stakeholders convened by Cooperative Network to develop consensus positions on the proposed changes affecting all cooperatives.

While several of the provisions within AB 353 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 provisions in AB 353 that are especially important to our electric co-op 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 undefined 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 that is made available. 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 underserved 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.

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 prospective buyers of the financial obligation to the co-op.

Also, this provision enables tenants to work with their landlords and benefit from energy improvements.

In conclusion, thank you for your consideration of AB 353. WECA feels that the bill provides many benefits for our members. I would be happy to answer any questions you might have.

# PIERCE PEPIN COOPERATIVE SERVICES

Live Better.®

September 27, 2017

To: Members, Assembly Committee on Financial Institutions

From: Larry Dokkestul, President & CEO, Pierce Pepin Cooperative Services

Re: Testimony in Support of AB 353

Members of the Committee:

I am Larry Dokkestul, President & CEO, Pierce Pepin Cooperative Services, headquartered in northwest Wisconsin near Ellsworth. Our cooperative, like many of the electric cooperatives, provides electric service to the rural areas of our state.

I would like to thank you for the opportunity to testify. I support AB 353 and want to address important provisions in the bill with regard to the extension of credit by electric cooperatives.

Provisions in the bill simplifies Electric Cooperative's existing authority to make consumer loans to their members, specifically providing "limited lending" to members of the cooperative for four qualifying projects - wiring safety, energy efficiency, conservation and back up generation.

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

### **Energy Efficiency/Conservation**

For example, one of the greatest returns on investment is weatherization improvements. Simply adding more insulation and sealing cracks can drastically reduce energy bills.

During energy audits or while responding to member requests on energy use, cooperative employees often identify improvements that could be made to members' homes or businesses.

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

**Some background.** To address these issues, over six years ago, in 2011, Pierce Pepin, Barron Electric, Polk Burnett Electric and Riverland Energy Cooperative, 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 (CHERP).

The purpose of the program was quite simple:

- Assess and improve the 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 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**

We have times when an electric member may need to upgrade their existing electric service for safety reasons. Again, some members may not have the means to pay an electrician a few hundred dollars for the work and obtaining a conventional loan is not an option.

This is another good example of where a simplified loan process could allow the cooperative to pay a qualified electrician chosen by the member for the upgrade and finance repayment over time.

### **Self-Help**

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.

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.

### **Key Lending Provisions of the Bill**

- The authority would only apply to electric cooperatives 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 of the member's loan obligation when a UCC filing is inappropriate. This is not a lien.
- Allows electric cooperatives to take advantage of the administrative efficiencies associated with the simplified lending requirements such 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 AB 353 and especially the provisions of the bill that would allow for a simplified loan process for the members of the cooperative, with limited lending specific to wiring safety, energy efficiency, conservation and back up generation.

Thank you.

September 27, 2017

To: Members, Assembly Financial Institutions Committee

From: Lori Meinholz, dairy farmer and co-op member, Middleton, Wis.

RE: Support for AB 353

Thank you to the committee for hearing AB 353 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 AB 353 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 provide valuable goods and services to 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. **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.**

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.





# PATRICK TESTIN

## STATE SENATOR

**DATE:** September 27, 2017  
**RE:** Testimony on 2017 AB 353/SB 281  
**TO:** The Assembly Committee on Financial Institutions  
**FROM:** Senator Patrick Testin

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Thank you to Chairman Katsma and the members of the committee for accepting my written 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.

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 while retaining the elements essential to a cooperative. 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 elected cooperative board members 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 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.

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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TO: Chairman Katsma and the Members of the Assembly Committee on Financial Institutions

FROM: Representative Gary Tauchen

DATE: September 27, 2017

RE: AB 353 Testimony

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

The Cooperative Statute Modernization Bill (AB 353 and SB 281) 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 AB 353 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.