



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-0502/P1  
ARG:jld

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

5         **SECTION 1.** 185.01 (4) (a) of the statutes is amended to read:  
6         185.01 (4) (a) ~~Either no~~ No member of the foreign cooperative who is an  
7         individual is allowed more than one vote because of the amount of stock or  
8         membership capital the member owns therein, ~~or the foreign cooperative does not~~  
9         ~~pay dividends on stock or membership capital in excess of 8 percent per year; and~~

\*\*\*\*NOTE: Please see the second \*\*\*\*NOTE after s. 185.12 (5m) of this draft.

**SECTION 2.** 185.12 (5m) of the statutes is created to read:

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

(b) Notwithstanding sub. (2), a cooperative holding company and its cooperative subsidiaries may, in its articles or bylaws, permit members to base 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.

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

\*\*\*\*NOTE: I added par. (c) because certain provisions of ch. 185 contemplate that each member will have one vote, so the vote of a majority of members would be a vote of a majority of voting interests. However, this draft contemplates differences in voting power so that a majority of members may not equate to a majority of voting interests. The draft does not change the method for determining a quorum under s. 185.14, i.e., a quorum is not determined according to voting power.

\*\*\*\*NOTE: Section 185.12 (5m), above, applies only to a domestic cooperative, so it is technically not inconsistent with the definition of “foreign cooperative” in s. 185.01 (4), as affected by this draft. However, with the treatment in s. 185.01 (4) (a), a cooperative not organized under Wisconsin law is also not a “foreign cooperative” if it adopts under its home state’s law proportional voting of the type allowed under this sub. (5m). Is this consistent with your intent, or would you like to modify s. 185.01 (4) (a) of this draft to address this issue?

**SECTION 3.** 185.21 (2) (c) of the statutes is repealed.

\*\*\*\*NOTE: In this draft, I repealed s. 185.21 (2) (c) because leaving the phrase “Dividends may be cumulative” does not fit with sub. (2) (intro.) and because s. 185.05 (1) (h) already recognizes that dividends may be cumulative.

**SECTION 4.** 185.31 (1) of the statutes is renumbered 185.31 (1) (a) and amended to read:

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 5.** 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 6.** 185.38 (1) (intro.) of the statutes is amended to read:

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

\*\*\*NOTE: Please advise if you did not intend for me to strike the word "fixed" in the second sentence of s. 185.38 (1) (intro.), above.

SECTION 7. 185.47 of the statutes is amended to read:

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

A cooperative shall keep correct and complete ~~books and~~ financial records of account, and shall also keep minutes of the proceedings of meetings of its members, board, and executive committee. The cooperative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any member or stockholder, or his or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the cooperative at least one week in advance, may examine for a proper purpose any ~~books or~~ of the cooperative's financial records covering the current or preceding 3 fiscal years and that are pertinent to the purpose specified in the notice, subject to any legal duty to preserve confidentiality or protect privacy. The board may deny a request to examine ~~books and~~ financial records if the board determines that the purpose is not directly related to the requester's interest as a member or stockholder in the business or affairs of the cooperative and or is otherwise contrary to the best interests of the cooperative. The cooperative may condition examination of financial records on the member or stockholder reimbursing the cooperative for the reasonable costs to produce the financial records and make requested copies of them.

(2) In any proceedings, or upon petition for such purpose any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the cooperative's ~~books or~~ financial records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to

1 be brought within this state. Such documents shall be kept at such place and for such  
2 time and purposes as the order designates. Any cooperative failing to comply with  
3 the order is subject to dissolution, and its directors and officers are liable for  
4 contempt of court.

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

10 **SECTION 8.** 185.72 (1) (c) of the statutes is amended to read:

11 185.72 (1) (c) The cooperative failed to comply with a court order for the  
12 production of books, financial records or other documents of the cooperative as  
13 provided in s. 185.47.

14 **SECTION 9.** 185.995 of the statutes is created to read:

15 **185.995 Extensions of credit by electric cooperatives for certain**  
16 **projects. (1)** In this section:

17 (a) “Electric cooperative” means a cooperative primarily engaged in  
18 generating, distributing, or furnishing electric energy to its members only.

19 (b) “Qualifying expenses” means expenses associated with a qualifying project,  
20 including any purchase price or installation cost.

21 (c) “Qualifying project” means any of the following:

22 1. Upgrading or replacing electrical wiring in any farm structure to meet  
23 requirements under the state electrical wiring code.

24 2. An energy audit conducted by a qualified energy auditor.

1           3. An energy efficiency or energy conservation improvement or other measure  
2 to increase energy efficiency or energy conservation.

3           **(2)** (a) An electric cooperative's extension of credit to its member or its  
4 member's landlord to finance qualifying expenses is not subject to chs. 421 to 426 if  
5 the electric cooperative enters into a written agreement with the member or the  
6 member's landlord covering the extension of credit.

7           (b) An electric cooperative that extends credit as provided in this section may  
8 include repayment installments as line item charges on its electric bills issued to the  
9 member or member's landlord.

      \*\*\*\*NOTE: Item 4.4. of the drafting instructions includes incomplete information  
regarding what restrictions should be placed on the written agreement under sub. (2) (a).  
I have therefore omitted the item for now, but can add this item after the pertinent  
information is provided.

10          **(3)** The written agreement under sub. (2) shall transfer with the property  
11 where the qualifying project is located upon transfer of that property. An electric  
12 cooperative may record with the office of the register of deeds for the county in which  
13 the property is located notice of a written agreement under sub. (2).

14          **(4)** If an electric cooperative enters into a written agreement under sub. (2)  
15 with respect to leased property, the electric cooperative shall provide notice of the  
16 written agreement to the lessee of the property if the lessee is responsible for paying  
17 the electric bills issued by the electric cooperative.

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

22          **(6)** (a) By entering into a written agreement under sub. (2), an electric  
23 cooperative does not assume liability or provide any warranty for any aspect of a

1     qualifying project or any qualifying expense. This paragraph does not apply with  
2     respect to work undertaken by an electric cooperative and does not limit any rights  
3     or remedies of a member or member's landlord against any other party.

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

6                             **(END)**