

# STATE OF NEW YORK

7953--A

2017-2018 Regular Sessions

## IN ASSEMBLY

May 23, 2017

Introduced by M. of A. BRINDISI, MAGEE, BUTLER, BLANKENBUSH, B. MILLER, PALMESANO, CROUCH -- read once and referred to the Committee on Energy -- recommitted to the Committee on Energy in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the rural electric cooperative law, in relation to refunds of capital contributions, allocations and retirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 17 of the rural electric cooperative law is  
2 amended by adding a new subdivision (f) to read as follows:

3 (f) Every cooperative shall keep, at the office of the cooperative,  
4 correct and complete books and records of account and minutes of the  
5 proceedings of its members, board and executive committees, if any, and  
6 shall keep at such office a list or record containing the names and  
7 addresses of all members, the class or classes of membership and amount  
8 of patronage capital allocated and unretired to each member, as well as  
9 the amount of any patronage capital allocated to nonmembers, and the  
10 dates when they respectively were allocated such patronage capital. Any  
11 of the foregoing books, minutes and records may be in written form or in  
12 any other form capable of being converted into written form within a  
13 reasonable time.

14 § 2. The rural electric cooperative law is amended by adding two new  
15 sections 19-a and 19-b to read as follows:

16 § 19-a. Conflict of interest policy. (a) Except as provided in subdi-  
17 vision (d) of this section, the board of every rural electric cooper-  
18 ative shall adopt, and oversee the implementation of, and compliance  
19 with, a conflict of interest policy to ensure that its directors, offi-  
20 cers and employees act in the cooperative's best interest and comply  
21 with applicable legal requirements.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1     (b) The conflict of interest policy shall include, at a minimum, the  
2 following provisions:

3     (1) a definition of the circumstances that constitute a conflict of  
4 interest;

5     (2) procedures for disclosing a conflict of interest or possible  
6 conflict of interest to the board or to a committee of the board, and  
7 procedure for the board or committee to determine whether a conflict  
8 exists;

9     (3) a requirement that the person with the conflict of interest not be  
10 present at or participate in the board or committee deliberation or vote  
11 on a matter giving rise to such conflict, provided that nothing in this  
12 section shall prohibit the board or a committee from requesting that the  
13 person with the conflict of interest present information as background  
14 or answer questions at a committee or board meeting prior to the  
15 commencement of deliberation or voting relating thereto;

16     (4) a prohibition against any attempt by the person with the conflict  
17 to influence improperly the deliberation or voting on the matter giving  
18 rise to such conflict; and

19     (5) a requirement that the existence and resolution of the conflict be  
20 documented in the cooperative's records, including in the minutes of any  
21 meeting at which the conflict was discussed or voted upon.

22     (c) The conflict of interest policy shall require that prior to the  
23 initial election of any director, and annually thereafter, such director  
24 shall complete, sign and submit to the secretary of the cooperative or a  
25 designated compliance officer a written statement identifying, to the  
26 best of the director's knowledge, any entity of which such director is  
27 an officer, director, trustee, member, owner (either as a sole proprie-  
28 tor or a partner), or employee and with which the cooperative has a  
29 relationship, and any transaction in which the cooperative is a partic-  
30 ipant and in which the director might have a conflicting interest. The  
31 policy shall require that each director annually resubmit such written  
32 statement. The secretary of the cooperative or the designated compliance  
33 officer shall provide a copy of all the completed statements to the  
34 president of the board.

35     (d) A rural electric cooperative that has adopted and possesses a  
36 conflict of interest policy pursuant to federal, state or local laws  
37 that is substantially consistent with the provisions of subdivision (b)  
38 of this section shall be deemed in compliance with provisions of this  
39 section.

40     (e) Nothing in this section shall be interpreted to require a rural  
41 electric cooperative to adopt any specific conflict of interest policy  
42 not otherwise required by this section or any other law or rule, or to  
43 supersede or limit any requirement or duty governing conflicts of inter-  
44 est required by any other law or rule.

45     § 19-b. Whistleblower policy. (a) Except as provided in subdivision  
46 (c) of this section, the board of every rural electric cooperative shall  
47 adopt, and oversee the implementation of, and compliance with, a whist-  
48 leblower policy to protect from retaliation persons who report suspected  
49 improper conduct. Such policy shall provide that no director, officer or  
50 employee of a rural electric cooperative who in good faith reports any  
51 action or suspected action taken by or within the cooperative that is  
52 illegal, fraudulent or in violation of any adopted policy or bylaw of  
53 the cooperative shall suffer intimidation, harassment, discrimination or  
54 other retaliation or, in the case of employees, adverse employment  
55 consequence.

56     (b) The whistleblower policy shall include the following provisions:

1 (1) procedures for the reporting of violations or suspected violations  
2 of laws or cooperative policies or bylaws, including procedures for  
3 preserving the confidentiality of reported information;

4 (2) a requirement that an employee, officer or director of the cooper-  
5 ative be designated to administer the whistleblower policy and to report  
6 to the board or an authorized committee thereof;

7 (3) a requirement that the person who is the subject of a whistleblow-  
8 er complaint not be present at or participate in board deliberations or  
9 vote on the matter relating to such complaint, provided that nothing in  
10 this paragraph shall prohibit the board from requesting that the person  
11 who is subject to the complaint present information as background or  
12 answer questions at a board meeting prior to the commencement of delib-  
13 erations or voting relating thereto; and

14 (4) a requirement that a copy of the policy be distributed to all  
15 directors, officers and employees. For purposes of this subdivision,  
16 posting the policy on the cooperative's website or at the cooperative's  
17 offices in a conspicuous location accessible to employees are among the  
18 methods a cooperative may use to satisfy the distribution requirement.

19 (c) A rural electric cooperative that has adopted and possesses a  
20 whistleblower policy pursuant to federal, state or local laws that is  
21 substantially consistent with the provisions of subdivision (b) of this  
22 section shall be deemed in compliance with provisions of this section.

23 (d) Nothing in this section shall be interpreted to relieve any rural  
24 electric cooperative from any additional requirements in relation to  
25 internal compliance, retaliation, or document retention required by any  
26 other law or rule.

27 § 3. Section 60 of the rural electric cooperative law is amended to  
28 read as follows:

29 § 60. ~~[Refunds to members. Revenues of a cooperative for any fiscal~~  
30 ~~year in excess of the amount thereof necessary;~~

31 ~~(a) To defray the expenses of the operation and maintenance of the~~  
32 ~~facilities of the cooperative during such fiscal year;~~

33 ~~(b) To pay interest and principal obligations of the cooperative~~  
34 ~~coming due in such fiscal year;~~

35 ~~(c) To finance, or to provide a reserve for the financing of, the~~  
36 ~~construction or acquisition by the cooperative of additional facilities~~  
37 ~~to the extent determined by the board of directors;~~

38 ~~(d) To provide a reasonable reserve for working capital as determined~~  
39 ~~by the board of directors;~~

40 ~~(e) To provide a reserve for the payment of indebtedness of the coop-~~  
41 ~~erative in an amount not less than the total of the interest and princi-~~  
42 ~~pal payment in respect thereof required to be made during the next~~  
43 ~~following fiscal year; and~~

44 ~~(f) To provide a fund for education in cooperation and for the dissem-~~  
45 ~~ination of information concerning the effective use of electric energy~~  
46 ~~and other services made available by the cooperative, shall, unless~~  
47 ~~otherwise determined by a vote of the members, be distributed by the~~  
48 ~~cooperative to its members and to other persons to whom the cooperative~~  
49 ~~supplies electric energy or other services, as patronage refunds~~  
50 ~~prorated in accordance with the patronage of the cooperative by the~~  
51 ~~respective members and such other persons, paid for during such fiscal~~  
52 ~~year; provided, however, that such distribution shall not be made to any~~  
53 ~~such other person until he has become a member of the cooperative. If~~  
54 ~~such other person does not become a member of the cooperative within one~~  
55 ~~year after the amount of his distributive share or accumulated distribu-~~  
56 ~~tive shares equals the membership fee required by the by-laws of the~~

~~cooperative, or, if no membership fee is required, within two years after the declaration of any such patronage refund, he shall cease to be entitled to such share or shares, which shall, in such case, be paid into the fund provided for in this subdivision. The cooperative shall make such additional provision, in the by-laws or otherwise, relative to the disposition of the revenues of the cooperative, as may be necessary and appropriate to establish and maintain the non-profit character of the cooperative. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.] Patronage capital~~

contributions, allocations, and retirements. (a) Each cooperative's by-laws shall, unless otherwise determined by agreement of the members, provide for patronage capital allocations and retirements in the manner provided by this section. Agreement by the members for purposes of this section shall mean member approval of by-law provisions or by a majority vote of the members voting at a duly called meeting. Any matter set forth in this section which is subject to determination of the board of directors shall be determined in the exercise of such board of director's business judgment.

(b) Patronage capital shall be determined by a cooperative on an annual basis and shall be the excess, if any, of amounts received or receivable by such cooperative from furnishing electricity over such cooperative's operating costs and expenses properly chargeable against furnishing electricity, as determined using such accounting method or methods as agreed upon by the members. Costs and expenses chargeable against furnishing electricity shall include:

(1) expenses of the operation and maintenance of its facilities during such fiscal year;

(2) interest obligations of the cooperative coming due in such fiscal year;

(3) depreciation and other expenses to finance or to provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of directors;

(4) expenses to provide a reasonable reserve for working capital as determined by the board of directors;

(5) expenses to provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year;

(6) expenses to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative; and

(7) all other costs and expenses from and directly related to the furnishing of electric energy to the patrons.

(c) "Patron", as referred to in subdivisions (b) through (h) of this section, shall be defined as (1) a member and (2) a nonmember to whom the cooperative furnishes electric energy or other services on a patronage basis pursuant to bylaws or as agreed upon by the members.

(d) On an annual basis, patronage capital determined under subdivision (b) of this section shall be allocated on the books of the cooperative to each patron having furnished such capital and shall be based upon and in proportion to:

(1) the revenue from each patron or group of similar patrons to the cooperative's total revenue;

1     (2) the contribution of each patron or group of similar patrons to the  
2 cooperative's overall patronage capital;

3     (3) the kilowatt-hour usage of each patron or group of similar patrons  
4 to the total kilowatt-hour usage of all patrons;

5     (4) any other method which is agreed upon by the members; or

6     (5) any combination of paragraphs one, two, three and/or four of this  
7 subdivision as agreed upon by the members.

8     (e) "Retirement" in reference to patronage capital shall mean the  
9 redemption and payment in cash or other property, as provided by subdivi-  
10 sion (f) of this section, of patronage capital to the cooperative  
11 patrons or former patrons to whom it has previously been allocated. The  
12 allocation of patronage capital to a patron's patronage capital account  
13 shall in no event create a vested right to the retirement of the amount  
14 so allocated. The board of directors of a cooperative may, in its  
15 discretion, retire patronage capital allocated on the books of the coop-  
16 erative when it determines such retirement is consistent with sound  
17 business and management practices and the long-term financial stability  
18 of the cooperative. Patronage capital shall be retired according to the  
19 method chosen by the members and at the time the board of directors  
20 shall determine as a matter of its discretion. However, patronage capi-  
21 tal may be retired in advance of the date when it would otherwise be  
22 retired under the previous sentence in such circumstances and upon such  
23 conditions as are agreed upon by the members, including, but not limited  
24 to, upon a patron's or former patron's death, the termination of a  
25 patron or former patron's electric service, or a patron or former  
26 patron's filing for bankruptcy. In the event of such early retirement of  
27 patronage capital, the amount of patronage capital allocated to the  
28 patron or former patron on the cooperative's books may be discounted for  
29 purposes of its retirement in accordance with such method as is agreed  
30 upon by the members. The difference between the discounted amount and  
31 the patron's or former patron's patronage capital may be retained by the  
32 cooperative as part of its net savings in a manner determined by the  
33 board of directors.

34     (f) When the board of directors of the cooperative has determined,  
35 pursuant to subdivision (e) of this section, that patronage capital  
36 shall be retired, the retirement may be accomplished by a bill credit,  
37 by the mailing of payment or notice of payment to the patron's or former  
38 patron's last known address of record on file with the cooperative, or  
39 by such other method as the board of directors shall determine to be  
40 appropriate. No interest shall be paid or payable by the cooperative on  
41 any patronage capital. The amount of patronage capital being retired may  
42 be reduced by any amount owed to the cooperative by the patron or former  
43 patron.

44     (g) A cooperative may adopt such procedures for the assignment and  
45 contribution of unclaimed patronage capital to the cooperative as are  
46 agreed upon by its members. Such procedures may include providing that  
47 patronage capital which has not been claimed by a patron or former  
48 patron, after reasonable efforts to locate said patron or former patron,  
49 shall be added to the net savings of the cooperative. Mailing of a check  
50 or notice of the availability of a check to the last known address of a  
51 patron or former patron by first class mail and publication of the list  
52 of patrons or former patrons having unclaimed patronage capital on the  
53 website and/or newsletter of the cooperative for a period of three years  
54 shall be deemed reasonable effort to locate said patron or former  
55 patron.

1 (h) In the event that the cooperative should engage in the business of  
2 furnishing goods and services other than electric energy, all amounts  
3 received and receivable therefrom which are in excess of costs and  
4 expenses properly chargeable against the furnishing of such goods or  
5 services shall, insofar as permitted by law, bylaws, or by approval of  
6 the members, be prorated annually on a patronage basis and allocated to  
7 each member and shall be retired to said member according to the method  
8 chosen by the members and at the time that the board of directors shall  
9 determine as a matter of its discretion. Nothing in this section,  
10 however, prevents a cooperative from furnishing goods and services other  
11 than electric energy on a non-patronage basis to non-members; the net  
12 earnings of which may be retained as part of its net savings.

13 (i) With respect to any cooperative formed under this chapter that is  
14 exempt from federal income taxation under paragraph twelve of subsection  
15 (c) of section five hundred one of the internal revenue code of nineteen  
16 eighty-six, as amended, or any corresponding provision of future federal  
17 tax law, or any cooperative which would otherwise qualify for said  
18 exemption but for having less than eighty-five percent (or whatever  
19 threshold may be specified in the future for said purpose by the inter-  
20 nal revenue code) of income from members, this section shall in all  
21 events be limited to and interpreted in a manner which is compliant with  
22 the requirements of exemption under such internal revenue code section,  
23 and any agreement by the members or determination by the board of direc-  
24 tors under this section with respect to the subject matter hereof shall  
25 also be limited to and interpreted in a manner which is compliant with  
26 such internal revenue code section.

27 § 4. This act shall take effect on the first of January next succeed-  
28 ing the date on which it shall have become a law.