

# STATE OF NEW YORK

6244

2017-2018 Regular Sessions

## IN SENATE

May 11, 2017

Introduced by Sens. BONACIC, SEWARD, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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 60 of the rural electric cooperative law is amended  
2 to read as follows:

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

5 ~~(a) To defray the expenses of the operation and maintenance of the~~  
6 ~~facilities of the cooperative during such fiscal year,~~

7 ~~(b) To pay interest and principal obligations of the cooperative~~  
8 ~~coming due in such fiscal year,~~

9 ~~(c) To finance, or to provide a reserve for the financing of, the~~  
10 ~~construction or acquisition by the cooperative of additional facilities~~  
11 ~~to the extent determined by the board of directors,~~

12 ~~(d) To provide a reasonable reserve for working capital as determined~~  
13 ~~by the board of directors,~~

14 ~~(e) To provide a reserve for the payment of indebtedness of the coop-~~  
15 ~~erative in an amount not less than the total of the interest and princi-~~  
16 ~~pal payment in respect thereof required to be made during the next~~  
17 ~~following fiscal year, and~~

18 ~~(f) To provide a fund for education in cooperation and for the dissem-~~  
19 ~~ination of information concerning the effective use of electric energy~~  
20 ~~and other services made available by the cooperative, shall, unless~~  
21 ~~otherwise determined by a vote of the members, be distributed by the~~  
22 ~~cooperative to its members and to other persons to whom the cooperative~~  
23 ~~supplies electric energy or other services, as patronage refunds~~  
24 ~~prorated in accordance with the patronage of the cooperative by the~~

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

LBD10932-03-7

~~respective members and such other persons, paid for during such fiscal year, provided, however, that such distribution shall not be made to any such other person until he has become a member of the cooperative. If such other person does not become a member of the cooperative within one year after the amount of his distributive share or accumulated distributive 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 include member approval of by-law provisions, policies, resolutions or otherwise. 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 or as determined by the board of directors. Costs and expenses chargeable against furnishing electricity may include, without limitation, those incurred to:

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

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

(3) 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) provide a reasonable reserve for working capital;

(5) 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; and

(6) 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.

(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, resolutions and policies adopted by the board of directors or other contractual authority.

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

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

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

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

7     (4) any other method which is agreed upon by the members or which is  
8     determined appropriate by the board of directors; or

9     (5) any combination of paragraphs one, two, three and/or four of this  
10    subdivision as agreed upon by the members or as determined appropriate  
11    by the board of directors; and

12    (6) allocation of patronage capital to a patron's patronage capital  
13    account shall in no event create a vested right to the retirement of the  
14    amount so allocated.

15    (e) "Retirement" in reference to patronage capital shall mean the  
16    redemption and payment in cash or other property, as provided by subdi-  
17    vision (f) of this section, of patronage capital to the cooperative  
18    members to whom it has previously been allocated. The board of directors  
19    of a cooperative may, in its discretion, retire patronage capital allo-  
20    cated on the books of the cooperative when it determines such retirement  
21    is consistent with sound business and management practices and the long-  
22    term financial stability of the cooperative. Patronage capital shall be  
23    retired according to the method chosen by the members or the board of  
24    directors as a matter of exercise of the board's business judgment.  
25    However, patronage capital may be retired in advance of the date when it  
26    would otherwise be retired under the previous sentence in such circum-  
27    stances and upon such conditions as are agreed upon by the members or as  
28    are determined appropriate by the board of directors, including, without  
29    limitation, upon a member's death, the termination of a member's elec-  
30    tric service, or a member's filing for bankruptcy. In the event of such  
31    early retirement of patronage capital, the amount of patronage capital  
32    allocated to the member on the cooperative's books may be discounted for  
33    purposes of its retirement in accordance with such method as is agreed  
34    upon by the members or as is determined to be appropriate by the board  
35    of directors. The difference between the discounted amount and the  
36    patron's patronage capital may be retained by the cooperative as part of  
37    its net savings in a manner determined by the board of directors.

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

48    (g) A cooperative may adopt such procedures for the assignment and  
49    contribution of unclaimed patronage capital to the cooperative as are  
50    agreed upon by its members or as determined by the board of directors.  
51    Such procedures may include providing that patronage capital which has  
52    not been claimed by a patron or former patron, after reasonable efforts  
53    to locate said patron or former patron, shall be added to the donated  
54    capital of the cooperative. Mailing of a check or notice of the avail-  
55    ability of a check to the last known address of a patron by first class  
56    mail and publication of the list of patrons or former patrons having

1 unclaimed patronage capital on the website and/or newsletter of the  
2 cooperative for a period of three years shall be deemed reasonable  
3 effort to locate said patron or former patron.

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

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

31 § 2. This act shall take effect on the first of January next succeed-  
32 ing the date on which it shall have become a law.