



Center for Cooperatives

UNIVERSITY OF WISCONSIN-MADISON

**MEMBER CONTROL
and the
2017 REVISIONS TO WISCONSIN COOPERATIVE STATUTE:**

The 2017 revision process for the Wisconsin state cooperative corporation statute, Chapter 185, opened a discussion about the alignment of statute revisions with cooperative principles. The following provides additional information on several of these topics.

MEMBER VOTING

What are the existing provisions for member voting rights under Wisconsin Chapter 185?

The existing Chapter 185 provisions for member voting did not change. The statute provides that each member has one vote. This democratic principle gives all member owners an equal voice in the affairs of their cooperative.

The statute also makes provisions that allow additional voting in certain situations:

- The articles may provide that:
 - An association that is a member of a cooperative may cast additional votes, not exceeding a number equal to its membership.
 - A cooperative whose member-patrons include other associations may base voting in whole or in part on a patronage basis.
- The bylaws may provide for:
 - representation of members by delegates apportioned by territory or other districts or units, in which delegates may cast a vote for each member represented by the delegate.
- Stockholders of stock other than membership stock are allowed one vote, regardless of amount of stock, in the following situations:
 - a proposed amendment to articles that will affect stockholders,
 - mergers and consolidation,

- voluntary dissolution, if allowed under the articles.

The statute also specifies that the cooperative's bylaws shall describe the requirements and qualifications for voting membership. A cooperative may decide on requirements such as the purchase of a member share, additional equity payments, or a minimum amount of business conducted with the cooperative. Inactive members who no longer patronize the cooperative but still have equity invested may not have voting rights, depending on the cooperative's member agreement and bylaws.

What are the new provisions for member voting rights under Wisconsin Chapter 185?

The revisions to Chapter 185 added another exception to a one-member, one-vote requirement. Chapter 185.12 (5m) allows a cooperative holding company and its subsidiaries to base member voting rights on member patronage, equity, or a combination of both.

This new provision only applies to a cooperative holding company, which is defined as a company that owns or controls subsidiaries that operate on a cooperative basis, and which are the primary part of its business and activities.

Presently, the only cooperative holding company in Wisconsin is CRI, which includes its cooperative subsidiaries Genex and AgSource.

The provision is permissive, not mandatory. Changes to member voting rules must be adopted through a bylaw change or an amendment to the articles of incorporation.

Chapter 185 states that only members may amend bylaws, unless the members have adopted a bylaw which permits the board to make and amend specified bylaws. Articles may be amended at a member meeting by a two-thirds vote cast.

What were the concerns about the statutory revisions to member voting rights?

Business entities differ in their ownership and control structure, and the purpose of the enterprise. The requirements specified in business incorporation statutes reflect these differences. Wisconsin Chapter 185 lays out the requirements for cooperative businesses that differentiate them from other types of business entities.

Periodic efforts have been undertaken to refine and synthesize a common set of principles that characterize cooperative operation. Central to principles defined by these efforts are

democratic member control, and a focus on providing benefits to members. However, the diverse member needs across a wide range of business sectors and circumstances have led to variations in interpretation and emphasis of the principles.¹

The exercise of “democratic control” using a one-member, one-vote system was a feature of the majority of state farmer cooperative statutes as of 1982. Some state statutes have been revised since then to include provisions for proportional voting.²

Do other state statutes allow member voting based on patronage or equity?

Some cooperatives in other states use proportional voting based on patronage or equity shares. Members who conduct more business with the cooperative, or have higher levels of patronage equity invested, have a greater share of the voting rights than those with lower levels of patronage or equity.

In some state statutes, voting rights based on patronage or equity are in addition to the one member, one-vote provisions. Statutes also may limit the percentage of votes that one member can have. The revisions to Chapter 185 did not include these types of requirements in allowing voting based on patronage or equity.

Why would a cooperative consider member voting based on patronage or equity? Is it democratic?

Typically, members exert democratic control by electing a board of directors who make decisions that balance the financial stability of the cooperative with serving the interests of its members. When there are major differences in member patronage levels, transaction types, or

¹ The “principle features” of the cooperative Rochdale System in mid-19th century England strongly influenced cooperative development in the U.S. and elsewhere. These principles have been refined, adapted, and reinterpreted over time. Currently, there are two commonly used statements of cooperative principles. The U.S. Department of Agriculture (USDA), which supports cooperative enterprises in rural communities, uses three general principles to define a cooperative enterprise: member ownership, member democratic control, and service to provide member benefit. These directly align with several of the seven principles used by the International Cooperative Alliance (ICA), the worldwide apex organization for cooperatives, to describe a cooperative. See also [RR 231 Comparing Cooperative Principles of U.S. Department of Agriculture and the International Cooperative Alliance](#).

² There is no current comprehensive compendium of state cooperative laws. The most recent was a 1982 USDA publication, [State Incorporation Statutes for Farmer Cooperatives](#), which covered general and agricultural cooperative incorporation statutes. An updated review of cooperative state statutes is underway, and progress to date is available through the NCBA [website](#). See also [RR 156 Voting and Representation Systems in Agricultural Cooperatives](#), USDA, page 11, 1997.

service priorities, board decision-making about cooperative priorities and strategies can be more challenging.

Members, as owners, have an obligation to invest in their cooperative. Those who conduct more business with their cooperative typically have more equity invested. This occurs through the cooperative business practice of retaining patronage allocations, which links the level of member equity investments to member patronage.³

A cooperative's members may decide that voting rights based on patronage and/or equity levels will result in an elected board that can better integrate the needs of active members with the benefits provided to the broader membership.

Not all cooperatives with disparate member interests may choose this route. The capacity of board directors, the decision-making culture within the board, and the strategic identification of goals that will benefit a wider membership may lead a cooperative to retain the one-member, one-vote system. Members of a cooperative can evaluate and decide what voting system best meets the cooperative's purpose and goals.

Voting systems are of particular interest to large agricultural cooperatives, which often use retained member equity to invest in major capital assets that will provide member benefits.

OUTSIDE DIRECTORS ON THE BOARD

What are provisions for member directors under Wisconsin Chapter 185?

Prior to the 2017 revisions, Chapter 185.31 specified that only members could serve as directors on the board. This requirement supported member control of the cooperative business and its operational focus of member benefit.

What do the 2017 revisions to the law allow?

³ A portion of a cooperative's annual net earnings may be allocated to individual members based on patronage, or use. The cooperative may decide to retain a portion of these allocations as owner equity investments, used as working capital or for asset investments that will benefit members into the future. Many cooperatives are expected to systematically redeem past retained patronage to members with the retained earnings from more recent patronage allocations. A major challenge for cooperative boards is to manage the retained equity program so that member equity investments generally correspond with members who are actively patronizing the cooperative.

Chapter 185.31 (1)(b) was added to permit up to two non-member “outside” directors to be elected to the board and to have the same voting rights as member directors. The number of outside directors cannot be more than 20% of all directors.

The bylaws may provide that the outside directors are elected by a majority of the voting members or delegates, or by a majority of the member directors on the board.

The statute revision is permissive, not mandatory. The cooperative would need to amend its bylaws to specify the procedures and requirements for the election of outside director(s).

Chapter 185 states that only members may amend bylaws, unless the members have adopted a bylaw that permits the board to make and amend specified bylaws. Articles may be amended at a member meeting by a two-thirds vote cast.

Why would a cooperative consider electing outside directors to its board?

The board is responsible for the strategic direction of the cooperative. It works to assure that the cooperative is serving the needs of the members while remaining financially sound.

Many cooperative boards use outside, non-voting advisors on an ongoing or as-needed basis. These outside advisors provide expertise about topics of strategic importance that board members may not have. Outside advisors may also provide another perspective that is useful to the board in its deliberations. Outside advisors typically are paid for their time at market rate levels.

Some have suggested that advisors would be more engaged in the board decision-making process if they served as a voting director, and had the same legal and fiduciary responsibilities as other member directors. The perspective of the non-member director may not be grounded in the member experience, but may be balanced by expertise and experience.

FOR MORE INFORMATION:

USDA, [CIR 11 Co-op Essentials](#)

USDA, [RR 156 Voting and Representation Systems in Agricultural Cooperatives](#)

USDA, [RR 155 Decision-Making in Cooperatives with Diverse Member Interests](#)

USDA, [RR 75 Designing Membership Structures for Large Agricultural Cooperatives](#)

USDA, [CIR 63 Nominating, Electing and Compensating Cooperative Directors](#)

USDA, [RR 231 Comparing Cooperative Principles of U.S. Department of Agriculture and the International Cooperative Alliance](#)

[Cooperative Principles and Equity Financing: A Critical Discussion](#); Jeffrey S. Royer

[Cooperative Principles and Equity Financing: A Discussion of a Critical Discussion](#); Michael Cook

[The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles](#); Brett Fairbairn

CHAPTER 185 REVISIONS:

Act 76, which revises provisions in Chapter 185:

<http://docs.legis.wisconsin.gov/2017/related/acts/76>

A brief summary memo of the act, issued by the Wisconsin Legislative Council:

<http://www.uwcc.wisc.edu/issues/Legal-Tax/memo.act076.pdf>