



PATRICK TESTIN

STATE SENATOR

DATE: February 2nd, 2021

RE: **Testimony on 2021 Senate Bill 25**

TO: The Senate Committee on Sporting Heritage, Small Business, and Rural Issues

FROM: Senator Patrick Testin

Good morning. I appreciate Chairman Stafsholt and the committee for holding a hearing on Senate Bill 25 (SB 25), which enables cooperatives to hold their statutorily required annual meetings virtually during a time when a catastrophic event prevents them from meeting in person. This would of course apply during the pandemic.

Though the Department of Financial Institutions (DFI) issued emergency guidance on April 3, 2020, indicating that for the duration of the public health emergency (the original order has long since expired) DFI would not construe various chapters, including chapter 185, as requiring in-person meetings that does not remove all legal risk from cooperatives.

While this risk is minimal to cooperatives, we are seeking to modify the law to clearly allow virtual meetings in emergency situations and to allow for emergency bylaws and powers similar to powers that already exist for other corporate entities under chapters 180 and 181.

This legislation is supported by the Wisconsin Electric Cooperative Association, Wisconsin Cheese Makers Association, Dairyland Power Cooperative, Cooperative Network, Wisconsin Statewide Telephone Cooperative Association, and Rural Wisconsin Health Cooperative.

Please join both myself and these groups in supporting this legislation.



ROB SUMMERFIELD

STATE REPRESENTATIVE • 67th ASSEMBLY DISTRICT

February 2, 2021

Senator Stafsholt, Chair
Senator Petrowski, Vice-Chair
Members of the Senate Committee on Sporting Heritage, Small Business and Rural Issues

Testimony on 2021 Senate Bill 25

Relating to: member meetings, bylaws, and emergency powers of a cooperative

Dear Chairman Stafsholt, Vice-Chairman Petrowski, and Committee Members:

Thank you for providing me with the opportunity to testify at today's public hearing on Senate Bill 25. I appreciate your time and consideration of this legislation.

Under state law, cooperatives are required to hold an annual meeting in person at their "principle office" during the first six months of their fiscal year. However, the COVID-19 pandemic has created unique difficulties for cooperatives to meet this requirement.

The Department of Financial Institutions (DFI) did issue emergency guidance that waived the in-person requirement. However, the requirement does still exist in state statute and potentially leaves cooperatives legally vulnerable.

Senator Bill 25 seeks to address this susceptibility by clarifying in law that cooperatives, during states of emergency only, are allowed to meet virtually. This would absolve them from potential legal liability and allow them to operate safely during the rest of the COVID-19 pandemic.

I ask that you join me in supporting this bill.



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Cooperative
Association**

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**Senate Committee on Sporting Heritage, Small Business and Rural Issues
February 2, 2021
Testimony on Senate Bill 25**

Good morning Chair Stafsholt and members of the committee:

My name is Rob Richard and I'm the Director of Government Relations for the Wisconsin Electric Cooperative Association (WECA). I am before you today to speak in favor of Senate Bill 25, relating to member meetings, bylaws and emergency powers of a cooperative.

To give the committee a little background, I first reached out to Sen. Testin and Rep. Summerfield in April of 2020 as the first public health emergency, and subsequent Safer at Home order, was implemented by the Governor. This was during the time that many of our electric cooperatives were planning on holding their annual meetings, but as the pandemic became more prevalent our cooperatives started to postpone those meetings until they could figure out a way to safely hold them.

I began having conversations with the Department of Financial Institutions (DFI) on what cooperatives should do to meet their legal obligation to hold an annual meeting. DFI issued emergency guidance on April 3, 2020, indicating that for the duration of the public health emergency DFI would not construe various chapters, including chapter 185, as requiring in-person meetings. While this guidance was useful to our members, there was no guarantee a member of a cooperative couldn't claim a violation of statutes/bylaws and seek to force a cooperative to hold a meeting as required, or they could claim that actions taken by a board of directors held during a virtual meeting are null and void. Ultimately a court would decide this, not guidance issued by DFI.

While WECA had hoped to include this provision in the COVID bill passed by the legislature last April, those attempts failed. In the meantime, many of our electric cooperatives held socially-distanced in-person meetings, drive-in meetings or they rolled the dice and held limited virtual meetings to honor their annual meeting obligations.

While I am thankful that no legal action has been sought thus far, we strongly support this legislation to remove further legal risk in the future.

This bill would help our electric cooperatives accomplish three main objectives:

- Senate Bill 25 would allow a cooperative to hold member meetings remotely, and if certain conditions are satisfied, participation at the meeting and casting of votes would be recognized.
- Unless a cooperative's articles of incorporation say otherwise, Senate Bill 25 would allow a cooperative's board to adopt emergency bylaws that are effective only during the emergency.
- Senate Bill 25 would also provide emergency powers to a cooperative allowing a cooperative board to relocate its principal office, and give notice of a board meeting (unless emergency bylaws say otherwise) only to those directors whom it is practicable to reach and give notice in the most practicable manner.

To be clear, we are not asking for any powers that do not currently exist for corporations and nonstock corporations that exist under Chapters 180 and 181. In fact, much of the language in the bill originated from those chapters.

Chair Stafsholt and committee members, I have included with my testimony letters from several electric cooperatives that tell their story of how they adapted to the challenges of holding an annual meeting last year and convey their support as to why Senate Bill 25 should be passed into law.

Thank you for your time and I respectfully ask that this committee support Senate Bill 25 and expedite its passage as the annual meeting season will soon be once again upon us.

Washington Island Electric Co-operative

1/29/2021

To: Senate Committee on Sporting Heritage, Small Business and Rural Issues
Sen. Rob Stafsholt, Chairman

RE: Support for SB 25 (and its Assembly counterpart)

Senator Stafsholt and Committee members,

Like many Cooperatives, 2020 presented a serious conundrum for the Washington Island Electric Cooperative in how and when to hold our annual meeting. We needed to make decisions that were not only in the best interest of the Cooperative as a whole, but that also made maximum effort to keep our members safe and healthy.

For 71 years, our bylaws specified that our annual meeting would be held on the first Friday in April each year and if that Friday happened to be Good Friday, it would be held on the following Monday.

This was a concern for many members in that, due to our seasonal nature, this April timeframe was generally too early for our "summer" members to participate in the annual meeting. After a poll of our members, in 2016 a by-law change was recommended and voted on at the annual meeting that year to change this to a date and time to be established by the Board of Directors between May 1 and June 30 of each year. It passed overwhelmingly.

I give you this background because it illustrates that our purpose as a Cooperative is to serve the needs of our members and even after being locked in to something for 71 years, we made an effort to change in order to best meet their needs.

With the pandemic in full swing and fear (both reasonable and unreasonable) circulating among our members, we needed to make a decision regarding how and when to hold our annual meeting to best meet their needs and alleviate their fears and any risk to their health and wellbeing. Two dates were chosen within our existing by-laws and we were forced to cancel both of those dates. In addition, our regular meeting place, the gymnasium at the Washington Island Community Center, was closed due to the pandemic by the Town Board (rightfully so).

As we got closer to the end of June, it became apparent that things were unlikely to change and the board made the decision that we would postpone the meeting until August, with hopes that things would get better and that we would set two dates and would hold the meeting outside on Cooperative grounds. We communicated this widely with our members via our web page, social media and with actual mailings.

We held our annual meeting on August 15th, 2020 outside in the Cooperative parking lot. While we had significantly smaller attendance than in previous years, we had more than a quorum to conduct

Washington Island Electric Co-operative

business. This was not an election year for the Cooperative's board and was essentially a general business meeting to discuss the performance of the Cooperative over the past year. It was well received.

This annual meeting was held outside of the requirements of our by-laws. Our members, being fully aware of the situation, had no issue with the decision. Our next election year is 2022 and at that time we intend to again offer a by-law change to the members that give the Cooperative board the flexibility to make such decisions under emergency circumstances. We already have a clause in the annual meeting portion of our by-laws that notes "failure to hold an annual meeting of the members will not constitute nor result in dissolution of the Cooperative."

Until our by-law changes are presented and approved by the membership, SB 25 takes away any uncertainty during such emergency circumstances that a problem would arise invalidating decisions made by the board and Cooperative staff due to the emergency. While we have an excellent relationship with our membership and communicate with them regularly, we still were in violation of our own by-laws. In the best interest of our members, the Board and Cooperative Management made a decision to let the chips fall where they may in order to best serve the membership's wellbeing.

Both State Senator Jacque and State Representative Kitchens, our legislators, are co-sponsors of this bill and we would ask you to join them in their support of legislation that helps Cooperatives serve their members.

Respectfully,



Robert B. Cornell
Manager, Washington Island Electric Cooperative, Inc
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Washington Island, WI 54246



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February 1, 2021

To: Senate Committee on Sporting Heritage, Small Business and Rural Issues
Sen. Rob Stafsholt, Chair

Re: Support for SB 25 and Assembly Counterpart, Relating to Co-op Member Meetings

Polk-Burnett Electric Cooperative and other co-ops across our state have come together to **recommend a bill that would allow us to hold member meetings remotely, adopt emergency bylaws and have other powers in an emergency. We ask for your support of this bill that enables cooperatives to better serve our members.**

Last summer, Polk-Burnett moved its 82nd Annual Meeting to an online format, under Governor Evers' emergency orders to prevent the spread of COVID-19. The online format was very successful, with 198 members and guests attending from the convenience, comfort and safety of their homes.

Polk-Burnett selected a virtual platform that did not require members to have a special app or software to download. Members were verified and registered online. We met our quorum requirement and had 40 minutes of Q&A dialog between the membership and General Manager Steve Stroshane. We received 75 comments and questions from members, compared to one or two in prior years; the virtual format provided better engagement than in-person meetings!

Our online meeting did not sacrifice quality or our cooperative principles. Members commented that they liked the online meeting format, which allowed many of them to attend for the first time.

We would appreciate your support of SB 25.

Thank you,

Steve Stroshane
General Manager

Joan O'Fallon
Communications Director



**Dunn Energy
Cooperative**

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February 1, 2021

Senate Committee on Sporting Heritage, Small Business and Rural Issue
Senator Rob Stafsholt, Chairman

Senator Stafsholt,

I write today to offer my full support of Senate Bill 25 and its Assembly counterpart. Undoubtedly COVID-19 has impacted each of every resident, business and organization in Wisconsin over the last year. All of us have had to find ways to keep our families, friends, employees and businesses safe from this pandemic. As a rural electric cooperative serving over 10,000 members in western Wisconsin, we've looked for innovative ways to keep our employees safe and keep the lights on for our members. SB25 gives us another tool to accomplish that mission.

As you are well aware, Cooperatives are required to hold an annual meeting of its membership. At Dunn Energy Cooperative, this event typically takes place in March of each year. Due to COVID-19 we postponed our annual meeting a few times in hopes of better health conditions in our area. It became clear that the pandemic was not going to let up and we needed to find a way to hold our annual meeting to comply with state statute. Our bylaws do note state when the annual meeting has to occur each year. State statutes do however require us to complete the annual meeting within 6 months of our fiscal year end (December).

We decided to hold our annual meeting in June of 2020 at the Cooperative. We did it "drive-in" style with members staying in their cars, listening to the meeting on the radio and honking their horns for voting. The meeting was a success and we had close to 70 members participate, while others listened at home. While not perfect, it was innovate and it was really the only option we had to safely hold our annual meeting and meet the State statute.

SB25 would allow Cooperatives to hold our annual meetings via a virtual format should there be challenges like the pandemic in the future. Our Board has also discussed amending our bylaws to allow for this type of meeting format. However we don't open the bylaws very often and there is a process that we must follow to make changes. SB25 would allow us the flexibility to hold our annual meeting remotely this year if we needed to. We have already set our annual meeting for June 19th, 2021 to allow for an outdoor, drive in style, meeting again should the pandemic prevent us from safely gathering.

In conclusion, SB 25 has my full support. It is a common sense legislation that will allow us to safely meet our obligations to our membership during these challenging times. If you have any questions please feel free to contact me at 715-232-6240 or via email at housej@dunnenergy.com

Sincerely,

A handwritten signature in black ink that reads "Jesse Singerhouse". The signature is written in a cursive, flowing style.

Jesse Singerhouse
General Manager/CEO
Dunn Energy Cooperative



February 2, 2021


Senator Rob Stafsholt
Room 15 South
State Capitol
PO Box 7882
Madison, WI 53708

Dear Chairman Stafsholt and Members of the Committee,

Dairyland Power Cooperative is a Generation and Transmission Cooperative located in La Crosse, Wisconsin, serving member cooperatives in Wisconsin, Minnesota, Iowa and Illinois. Dairyland provides the electrical requirements and other services for 24-member electric distribution cooperatives and 17 municipal utilities in the Upper Midwest. In turn, these cooperatives and municipals deliver the electricity to more than half-million people, meeting their energy needs every day. As a Cooperative, Dairyland is governed by a Board of Directors that oversees the by-laws of the Cooperative. Dairyland is in support of Senate Bill 25, amending the by-laws of a cooperative and allowing for remote annual meetings to be held during an emergency.

In Spring of 2020, The Dairyland Board of Directors began the discussion of how to hold the Cooperatives Annual Meeting during the Pandemic. According to WI Stats. 185.13 cooperative are required to hold an annual meeting and requires the annual meeting to be “held at the principal office or such other place as the board may determine”. The statute also requires the meeting to occur “within the first six months after the close of the fiscal year”. A cooperative may modify those provisions; however, the law does not allow for a virtual or remote annual meeting. Due to COVID-19, the Board was mindful of the current public health risk posed by large meetings, the uncertainty of the duration of the emergency and the lead time required to plan for Dairyland’s Annual Meeting, The Board wanted to find a solution to the requirement while keeping members safe from the public health emergency.

For the 2020 annual meeting, Dairyland required written unanimous consent from all of our members, including Class A, C, D and E to forgo our annual meeting, elect Directors from 2020-2021 and approve the 2019 annual meeting. The unanimous consent of members in lieu of a meeting was effective on June 3, 2020 and was in compliance with the requirement in the Bylaws to hold the 2020 annual meeting. However, clarification of state law to allow for virtual or remote action is needed. Since the annual meeting, the Board has met virtually, or a hybrid of virtual and in-person to conduct monthly business. Clarifying state law to allow for a remote or virtual meeting will help Dairyland plan for our upcoming June annual meeting. With

A Touchstone Energy® Cooperative 

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Senator Stafsholt
February 2, 2021
Page 2

attendance at more than 700 members and guests, Dairyland can plan to meet virtually if that is an option the Board would like to pursue.

Dairyland supports Senate Bill 25 and appreciates Senators Testin and Ringhand for introducing the legislation. Please feel free to contact me if I may be of further assistance to you on this matter.

Sincerely,

Jennifer Shilling
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JKS:rjk