

HOUSE BILL NO. 206

INTRODUCED BY F. GARNER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING A RURAL COOPERATIVE UTILITY'S AUTHORITY TO RETAIN AND RETIRE CAPITAL CREDITS; AMENDING SECTION 35-18-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-18-316, MCA, is amended to read:

**"35-18-316. Refunds to members Allocation and retirement of patronage capital -- retention of unclaimed refunds retirement payments.** (1) ~~Revenue of a cooperative~~ A cooperative's patronage capital for any fiscal year must, unless otherwise determined by a vote of the members, be ~~distributed~~ allocated by the cooperative to its members ~~as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:~~ in accordance with this section.

(2) (a) Patronage capital must be determined by a cooperative on an annual basis and reflect an amount equal to cooperative revenues in excess of its costs of doing business.

(b) For the purposes of patronage capital, costs include but are not limited to revenue to:

~~(a)~~(i) defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;

~~(b)~~(ii) pay interest and principal obligations of the cooperative coming due in the fiscal year;

~~(c)~~(iii) finance or 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 trustees;

~~(d)~~(iv) provide a reasonable reserve for working capital;

~~(e)~~(v) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and

~~(f)~~(vi) provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electrical energy

1 and other services made available by the cooperative.

2 (3) (a) Patronage capital must annually be allocated on the books of the cooperative to each member.

3 (b) The allocation must be based on and in proportion to:

4 (i) the revenue from each member or group of similar members;

5 (ii) the contribution of each member or group of similar members to the cooperative's overall patronage  
6 capital; or

7 (iii) any combination of subsections (3)(b)(i) and (3)(b)(ii) as determined by the board of trustees.

8 (4) The allocation of patronage capital to a member's account does not vest until the board determines  
9 that retirement is proper pursuant to subsection (5).

10 (5) (a) Retirement of patronage capital is the actual payment, as provided in subsection (6), of patronage  
11 capital to the cooperative members to whom it has previously been allocated.

12 (b) The board of trustees of a cooperative may, in its discretion, use its business judgment to retire  
13 patronage capital allocated on the books of the cooperative when the retirement is consistent with sound business  
14 and management practices and the long-term financial stability of the cooperative. If the board of trustees, in its  
15 discretion, uses its business judgment to offer members the option of accepting retirement of patronage capital  
16 outside of the normal retirement cycle, then the retirement may be discounted from the board's approved  
17 retirement cycle to present-day value when determined to be appropriate by the board of trustees.

18 (6) When the board of trustees of the cooperative determines in accordance with subsection (5) that  
19 patronage capital should be retired, the payment must be made. Interest may not be paid or payable by the  
20 cooperative on any patronage capital furnished by its members.

21 ~~(2)(7)~~ Nothing contained in this section may be construed to prohibit the payment by a cooperative of  
22 all or any part of its indebtedness prior to the date when the payment becomes due.

23 ~~(3)(8)~~ A cooperative shall, upon the action of the board of trustees, retain ~~patronage refunds~~ retirements  
24 of patronage capital allocated to its members that remain unclaimed for a period of 5 years after the end of the  
25 year in which the ~~refunds are given~~ retirement is made. ~~Refunds retained by the cooperative~~ Unclaimed  
26 retirements retained by the cooperative must be used for educational purposes."  
27

28 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

29 - END -