

BY SENATORS RYAN, MOODY,
COOPER AND OWEN

1 IN THE SENATE

2 SENATE BILL NO. 55

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Cooperative Corporations;
7 providing fees and charges, and repealing
8 Sections 33-5-1 through 33-5-30 and 36-3-1
9 through 36-3-8, ACLA 1949; and establishing
10 an effective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 SHORT TITLE AND DEFINITIONS

13 Section 1. Short title.

14 This chapter shall be known and may be cited as the "Alaska
15 Cooperative Corporation Act".

16 Section 2. Definitions.

17 As used in this chapter, unless the context requires other-
18 wise:

19 (a) "Articles" means articles of incorporation.

20 (b) "Board" means board of directors.

21 (c) "Cooperative" means a cooperative corporation which is
22 subject to the provisions of this chapter.

23 (d) "Corporation" means a corporation which is not a
24 cooperative.

25 (e) "Court" means Superior Court or District Court until the
26 Superior Courts assume jurisdiction.

27 (f) "Foreign cooperative" means a cooperative corporation
28 organized under laws other than the laws of this state.

29 (g) "Member" means a person who has been qualified and

1 accepted for membership in a cooperative.

2 (h) "Membership stock" means any class of stock, continuous
3 ownership of which is required for membership in a cooperative.

4 (i) "Person" includes individuals, corporations, associa-
5 tions, firms, partnerships and joint stock companies.

6 (j) "Shareholder" means a holder of shares of capital stock
7 of a cooperative other than membership stock.

8 SUBSTANTIVE PROVISIONS

9 Section 3. Purposes for which cooperatives may be organized.

10 Cooperatives may be organized under this chapter for any
11 lawful purpose or purposes, except for the purpose of banking or
12 insurance, or the furnishing of electric or telephone service.

13 Section 4. General Powers.

14 Each cooperative shall have power:

15 (1) To have perpetual succession unless a limited period of
16 duration is stated in its articles.

17 (2) To sue and be sued, complain and defend, in its corporate
18 name.

19 (3) To have a corporate seal which may be altered at
20 pleasure, and to use the seal by causing it, or a facsimile there-
21 of, to be impressed or affixed or in any other manner reproduced.

22 (4) To purchase, take, receive, lease, take by gift, devise
23 or bequest, or otherwise acquire, own, hold, improve, use and
24 otherwise deal in and with, real or personal property, or any
25 interest therein, wherever situated.

26 (5) To sell, convey, mortgage, pledge, lease, exchange, trans-
27 fer and otherwise dispose of, all or any part of its property and
28 assets.

29 (6) To purchase, take, receive, subscribe for, or otherwise

1 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge,
2 or otherwise dispose of, and otherwise use and deal in and with,
3 shares or other interests in, or obligations of, other domestic or
4 foreign cooperatives and corporations, partnerships or individuals,
5 or direct or indirect obligations of the United States or of any
6 other government, state, territory, governmental district or
7 municipality or of any instrumentality thereof.

8 (7) To make contracts and incur liabilities, borrow money
9 at such rates of interest as the cooperative may determine, issue
10 its notes, bonds, certificates of indebtedness and other obliga-
11 tions, issue certificates representing equity interests in its
12 assets, and secure any of its obligations by mortgage or pledge
13 of all or any of its property, franchises and income.

14 (8) To lend money for its corporate purposes, invest and
15 reinvest its funds and take and hold real and personal property
16 as security for the payment of funds so loaned or invested.

17 (9) To conduct its business and affairs and have offices
18 and exercise its powers in any state, territory, district or
19 possession of the United States, or in any foreign country.

20 (10) To elect or appoint officers and agents, and define
21 their duties and fix their compensation.

22 (11) To make and alter By-Laws, consistent with its articles
23 and the laws of this state, for the administration and regulation
24 of its affairs.

25 (12) To make donations for the public welfare or for charit-
26 able, scientific or educational purposes.

27 (13) To indemnify any director, officer or agent or former
28 director, officer or agent, or any person who may have served at
29 its request as a director or officer of another domestic or foreign

1 cooperative of which it is a member, against expenses necessarily
2 incurred in defense of any proceeding in which he is a part because
3 he is or was such director, officer or agent. This subsection does
4 not apply to those proceedings in which the director, officer or
5 agent is adjudged liable for negligence or misconduct in the per-
6 formance of duty. Indemnification pursuant to this subsection is
7 not exclusive of other rights to which the director, officer or
8 agent may be entitled.

9 (14) To cease its activities and surrender its franchise.

10 (15) To have and exercise all powers necessary or convenient
11 to effect any or all of the purposes for which the cooperative is
12 organized.

13 Section 5. By-Laws.

14 The initial By-Laws of a cooperative shall be adopted by its
15 board of directors. Power to alter, amend or repeal the By-Laws or
16 adopt new By-Laws is vested in the members of the cooperative. By-
17 Laws may contain any provisions for the regulation and management of
18 the affairs of the cooperative not inconsistent with law or the
19 articles.

20 Section 6. Membership.

21 (1) Membership in a cooperative is conditioned on ownership
22 of a share of membership stock or payment of a membership fee as
23 set forth in the articles; except that the By-Laws of a cooperative
24 may authorize membership conditioned upon payment of part of the
25 membership fee or payment for part of the membership stock sub-
26 scribed for and compliance with an agreement to pay the balance.

27 (2) Qualifications for membership and method of acceptance
28 of members shall be as set forth in the By-Laws of the cooperative.

29 (3) By-Laws may provide for termination of membership and

1 the conditions and terms thereof.

2 Section 7. Registered office and registered agent; service
3 of process on cooperative.

4 (1) Each cooperative shall have and continuously maintain in
5 this state:

6 (a) A registered office which may, but need not be, the same
7 as its place of business.

8 (b) A registered agent, which agent may be either an individ-
9 ual resident in this state whose business office is identical with
10 such registered office, or a domestic corporation having a business
11 office identical with such registered office, or a foreign corpora-
12 tion authorized to transact business in this state and having a
13 business office identical with such registered office.

14 (2) A cooperative may change its registered office or regis-
15 tered agent in accordance with the procedure set forth in Sec. 12,
16 Ch. 126, SLA 1957, and a person who has been designated by a
17 cooperative as its registered agent may resign in accordance with
18 the procedure set forth in Sec. 12, Ch. 126, SLA 1957.

19 (3) A registered agent appointed by a cooperative is an agent
20 of the cooperative upon whom any process, notice or demand required
21 or permitted by law to be served upon the cooperative may be served.

22 Section 8. Defense of ultra vires.

23 No act and no transfer of property to or by a cooperative is
24 invalid because in excess of the cooperative's power to do such act
25 or make or receive such transfer, except that such lack of power
26 may be asserted in a proceeding by:

27 (1) A member, shareholder or director against the cooperative
28 to enjoin any act or transfer of property to or by the cooperative.
29 If the unauthorized acts or transfer sought to be enjoined are

1 being, or are to be, performed or made pursuant to any contract to
2 which the cooperative is a party, the court may, if all of the
3 parties to the contract are parties to the proceeding and if it
4 deems the same to be equitable, set aside and enjoin the perform-
5 ance of the contract, and in so doing may allow to the cooperative
6 or to the other parties to the contract, as the case may be,
7 compensation for the loss or damage sustained by either of them
8 which may result from the action of the court in setting aside and
9 enjoining the performance of the contract but anticipated profits
10 to be derived from the performance of the contract shall not be
11 awarded by the court as a loss or damage sustained.

12 (2) A cooperative, its legal representative, or through its
13 members or shareholders in a representative suit, against the offi-
14 cers or directors or former officers or directors of the cooperative.

15 (3) The Attorney General against the cooperative in an action
16 to dissolve the cooperative or to enjoin it from the transaction of
17 unauthorized business.

18 Section 9. Capital stock; membership stock.

19 (1) Any cooperative, including a cooperative which requires
20 a membership fee rather than the holding of membership stock as a
21 prerequisite of membership, has power to issue the number of shares
22 of capital stock stated in its articles. Such shares may be divided
23 into more than one class with such designations, preferences,
24 limitations and relative rights as shall be stated in the articles,
25 except that capital stock as such shall have no voting power except
26 as specifically authorized in this chapter.

27 (2) The articles may require that members own one or more
28 shares of membership stock, and may provide limitations on the
29 issuance and transferability of such stock. Unless restricted by

1 the articles, stock other than membership stock may be issued or
2 transferred without limitation.

3 (3) No stock certificate may be issued except upon payment
4 of the par value of the shares it represents if the shares have
5 par value, or if such shares are without par value, upon payment
6 of the consideration therefor expressed in dollars as may be fixed
7 for such shares by the board. Payment for shares may be in cash or
8 other property, tangible or intangible. If in other property, the
9 value thereof shall be determined by the board, and such determina-
10 tion, if made in good faith, is conclusive.

11 (4) Shareholders as such have no preemptive right to purchase
12 additional shares.

13 Section 10. Certificates representing shares.

14 Each certificate of stock of a cooperative shall bear the
15 manual or facsimile signature of a principal officer and shall
16 include the following information:

17 (1) The name of the cooperative, number and class of the
18 shares represented by the certificate, the par value of each share
19 or a statement that the shares are without par value, and if the
20 shares are membership stock, their designation as such.

21 (2) Any restrictions on the issuance or transfer of such shares

22 (3) If more than one class of stock is authorized or if
23 stock is authorized in a cooperative which requires a membership
24 fee of its members designation of the several classes of stock
25 and the respective preferences, limitations and relative rights
26 of such classes. In lieu of a full statement, the information
27 required by this paragraph may be given in summary form.

28 Section 11. Voting by shareholders.

29 (1) The provisions of Sec. 31, Ch. 126, SLA 1957, relating

1 to voting of shares in business corporations are applicable to
2 shareholders of cooperatives and shares of the capital stock of
3 cooperatives other than membership stock.

4 (2) For the purpose of determining shareholders entitled to
5 notice of or to vote at meetings, or entitled to receive payment of
6 any dividend, the By-Laws may fix in advance a date as the record
7 date for any such determination of shareholders. Such date shall be
8 not more than 50 days and not less than 10 days prior to the date on
9 which the particular action requiring such determination of share-
10 holders is to be taken. If no such record date is fixed by the By-
11 Laws, the date on which notice of the meeting is mailed or the date
12 on which the resolution of the board of directors declaring such
13 dividend is adopted, as the case may be, shall be the record date
14 for such determination of shareholders. When a determination of
15 shareholders entitled to vote at any meeting has been made as pro-
16 vided in this section, such determination shall apply to any
17 adjournment of that meeting.

18 Section 12. Subscription for shares.

19 A subscription for shares of a cooperative is irrevocable
20 for six months unless otherwise provided by the subscription
21 agreement, or unless all subscribers consent to the revocation.

22 Section 13. Limitation of liability of members.

23 Except for debts lawfully contracted between a member and the
24 cooperative, no member is liable for the debts of the cooperative to
25 an amount exceeding the sum remaining unpaid on his subscription for
26 shares of the cooperative, and the sum remaining unpaid on such mem-
27 ber's membership fee if such fee is required by the cooperative.

28 Section 14. Dividends on capital stock.

29 A cooperative organized with capital stock may pay such divi-

1 dend upon capital stock as is authorized by its articles if its
2 capital is not impaired and would not be impaired by such payment

3 Section 15. Recall, exchange or redemption of stock or
4 other evidence of equity by cooperative.

5 (1) Unless the articles provide otherwise, a cooperative
6 may recall membership stock upon termination of membership,
7 acquire, exchange, redeem, and reissue its own shares or other
8 evidences of equity. Consideration paid for shares of membership
9 stock recalled by the cooperative shall be the par value thereof
10 and accrued and unpaid dividends, if any, except that if such
11 shares have no par value the consideration paid therefor shall be
12 the consideration in dollars for which the shares were issued
13 plus accrued and unpaid dividends. The cooperative may set off
14 obligations to it of the holder of membership stock or other
15 stock or other evidence of equity. No such acquisition, recall
16 or redemption of stock or other evidence of equity shall be made
17 if the result thereof would be to bring the value of the remain-
18 ing assets of the cooperative below the aggregate of its indeb-
19 tedness. The articles may provide other limitations on the right
20 of a cooperative to acquire, recall, exchange or redeem its
21 shares or other evidences of equity.

22 (2) When shares are acquired, recalled, exchanged or
23 redeemed by the cooperative, such shares shall be restored to the
24 status of authorized but unissued shares.

25 Section 16. Missing securities or records relating to
26 securities.

27 (1) When a certificate for a security issued by a coopera-
28 tive is missing, the cooperative shall issue a duplicate certifi-
29 cate upon the request of the owner and upon the furnishing of such

1 indemnity as may be required by the cooperative.

2 (2) When records showing ownership of securities are missing
3 or if records upon which the apportionment of securities is based
4 are missing, and in either case if the information which is missing
5 is necessary to a proposed redemption of the securities, the co-
6 operative may give notice and redeem such securities as follows:

7 (a) The cooperative shall set aside an amount equal
8 to the value of the securities to be redeemed.

9 (b) The cooperative shall give notice of the redemp-
10 tion to all owners of such securities of which the cooperative
11 has knowledge.

12 (c) If there are securities the ownership of which is
13 unknown to the cooperative, it shall publish notice of the redemp-
14 tion at least once a month for four months in a newspaper of
15 general circulation in the judicial district in which the regis-
16 tered office of the cooperative is located.

17 (d) After the completion of such publication, any
18 unclaimed outstanding securities represented by the missing
19 records may then be terminated in accordance with the provisions
20 of this chapter dealing with unclaimed distributions, redemptions
21 or proceeds.

22 Section 17. Meetings of members.

23 (1) Meetings of members may be held either within or without
24 this state as may be provided in the By-Laws, and in the absence
25 of a By-Law provision such meetings shall be held at the princi-
26 pal place of business of the cooperative.

27 (2) An annual meeting of the members shall be held at such
28 time or within such time as may be provided in the By-Laws. If
29 the By-Laws do not fix a time for such meeting, the annual meeting

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1 shall be held in each calendar year at such time as the board
2 shall determine. Failure to hold the annual meeting at the
3 designated time does not work a forfeiture or dissolution of the
4 cooperative.

5 (3) Special member meetings may be called by the president
6 or the board; or the secretary shall call such a meeting upon
7 the filing of a petition stating the business to be brought before
8 the meeting signed by not less than 10 per cent of the members
9 of the cooperative.

10 (4) Written or printed notice, stating the place, day and
11 hour, and in case of a special member meeting the purposes for
12 which the meeting is called, shall be given to each member and
13 each shareholder, if shareholders are entitled to vote at such
14 meeting, either personally or by mail not less than seven or more
15 than 30 days before the meeting by direction of the person calling
16 the meeting. If mailed, the notice shall be deemed to be given
17 when deposited in the United States mail addressed to the member
18 or shareholder at his address as it appears on the records of the
19 cooperative with postage thereon prepaid. At any meeting at
20 which the members are to be represented by delegates, notice to the
21 members may be given by notifying the delegates and their alter-
22 nates if any.

23 (5) A cooperative may provide in its By-Laws:

24 (a) For the formation of districts and the holding of
25 member meetings by districts and that elections of directors may
26 be held at district meetings.

27 (b) That district meetings may elect delegates who
28 shall represent their districts in annual and special meetings of
29 the members. Notice of district meetings shall be given in the

1 same manner as prescribed in this section for member meetings.

2 Section 18. Voting by members.

3 (1) At any member meeting each member has one vote except
4 that By-Laws may authorize voting according to actual, estimated
5 or potential patronage, or a combination of such plans of voting.
6 Shares of stock as such shall not be given voting power except
7 in the specific instances authorized by this chapter.

8 (2) Members as such shall not vote by proxy; but a member
9 that is a corporation, association or partnership may designate
10 a representative to cast its vote. In the absence of written
11 notice that some person has been designated to represent a member
12 which is other than a natural person, such member may be represen-
13 ted by any of its principal officers. If the By-Laws of a co-
14 operative provide for the formation of districts and the election
15 of delegates at district meetings to represent their districts in
16 member meetings, such representation is not considered voting
17 by proxy, and the delegates so elected shall cast the votes to
18 which members represented by them are entitled on such matters as
19 are not covered by mail ballots submitted to all members.

20 (3) If the By-Laws so provide, the board may cause to be
21 submitted by mail ballot any question to be voted on at any
22 member meeting, including the election of directors. In such
23 event the secretary shall mail to each member along with the
24 notice of the meeting, the ballot on each such question and a
25 voting envelope. The ballot may be cast only in a sealed envel-
26 ope which is authenticated by the member's signature. A vote
27 so cast shall be counted as if the member were present and voting
28 in person.

29 (4) The By-Laws may set forth provisions, not inconsistent

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1 with this chapter, relating to the methods and procedures for
2 voting.

3 Section 19. Quorum of members.

4 Ten percent of voting members shall be present, in person or
5 by proxy, if district delegates at any annual or special meeting
6 of a cooperative to constitute a quorum of such meeting, unless the
7 By-Laws of that cooperative provide that a greater number constitutes
8 a quorum.

9 Section 20. Board of Directors.

10 (1) The business and affairs of a cooperative shall be man-
11 aged by a board of directors. Each director shall at all times dur-
12 ing his term of office be a member or a representative of a member
13 which is other than a natural person. Unless the By-Laws otherwise
14 provide, directors need not be residents of this state. The By-Laws
15 may prescribe any other qualifications for directors and may provide
16 that directors be from specified territorial districts.

17 (2) The number of directors of a cooperative shall be not
18 less than three. Subject to such limitation, the number of
19 directors shall be fixed or determined by the By-Laws, except
20 as to the number constituting the initial board, which number
21 shall be fixed by the articles.

22 (3) Directors constituting the initial board, named in the
23 articles, shall hold office until the first annual meeting of the
24 members and until their successors are elected and take office.
25 At that meeting and thereafter, directors shall be elected by the
26 members in the manner and for the term of office, not to exceed
27 three years, provided in the By-Laws. Each director shall enter
28 immediately upon the discharge of his duties and, subject to his
29 resignation or removal, shall hold office for the term for which

1 elected and until his successor takes office.

2 (4) A director may be removed upon a majority vote of all
3 members voting in person thereon at a duly called member meeting
4 if prior to the vote written reasons for removal of the director
5 are presented at a meeting of members and the director whose
6 removal is sought has had an opportunity to answer such reasons
7 at that meeting. The written statement of reasons for removal
8 shall be filed with the minutes of the meeting. The By-Laws may
9 contain such other provisions for the removal of a director as
10 may be consistent with the provisions of this subsection.

11 (5) Unless the By-Laws provide otherwise, any vacancy occur-
12 ring in the board may be filled by the affirmative vote of a
13 majority of the remaining directors though less than a quorum of
14 the board. The director elected to fill a vacancy shall be
15 elected for the unexpired term of his predecessor in office.

16 Section 21. Meetings of board of directors.

17 (1) Regular or special meetings of the board may be held
18 either within or without this state.

19 (2) Regular meetings of the board may be held with or
20 without notice as prescribed in the By-Laws. Special meetings of
21 the board shall be held upon such notice as is prescribed in the
22 By-Laws. Attendance of a director at a meeting shall constitute
23 a waiver of notice of the meeting except where a director attends
24 a meeting for the express purpose of objecting to the transaction
25 of any business because the meeting is not lawfully called or
26 convened.

27 (3) Unless the By-Laws provide otherwise, the purposes of
28 any meeting of the board need not be specified in the notice or
29 waiver of notice of the meeting.

1 (4) Unless a greater number is required in the By-Laws,
2 a majority of the number of directors fixed by or determined
3 pursuant to the By-Laws, or in the absence of a By-Law fixing
4 the number of directors, then of the number stated in the articles,
5 shall constitute a quorum for the transaction of business. Unless
6 a greater number is required in the By-Laws, an act of the major-
7 ity of the directors present at a meeting at which a quorum is
8 present is the act of the board.

9 Section 22. Executive committee.

10 (1) If the By-Laws so provide, the board may elect an
11 executive committee to consist of three or more directors, which
12 committee to the extent provided in the By-Laws of the coopera-
13 tive shall have and may exercise all the authority of the board
14 in the management of the cooperative, except in respect to:

15 (a) Apportionment or distribution of net proceeds, savings
16 or losses.

17 (b) Selection of officers.

18 (c) Filling of vacancies in the board or the executive
19 committee.

20 (2) The board may elect other directors as alternates for
21 members of the executive committee.

22 (3) Designation of an executive committee and the delegation
23 thereto of authority shall not operate to relieve the board or
24 any member thereof of any responsibility imposed upon it or him by
25 law.

26 Section 23. Officers.

27 (1) The principal officers of a cooperative are a president,
28 one or more vice presidents as prescribed in the By-Laws, a
29 secretary and a treasurer, which officers shall be elected

1 annually by the board at such time and in such manner as the
2 By-Laws provide. The offices of secretary and treasurer may be
3 combined in one person. Each principal officer except the secre-
4 tary and the treasurer, and one of the vice presidents if the
5 By-Laws provide for more than one, must be a director of the co-
6 operative. The manager of a cooperative may hold the office of
7 vice president if more than one vice president is provided for in
8 the By-Laws.

9 (2) Any other officer may be chosen by the board.

10 (3) All officers shall have such authority and perform such
11 duties as the By-Laws provide, or as the board may determine, not
12 inconsistent with the By-Laws. Any officer may be removed by the
13 board whenever in its judgment the best interests of the coopera-
14 tive will be served thereby. Election or appointment shall not
15 of itself create contract rights.

16 Section 24. Compensation and benefits to directors,
17 officers and employees.

18 (1) Unless the By-Laws provide otherwise, only the members
19 of the cooperative may establish compensation or other benefits
20 for a director, not available generally to officers and employ-
21 ees, for services as a director.

22 (2) Unless the By-Laws provide otherwise, no director shall
23 hold during his term as director any position in the cooperative
24 on regular salary.

25 (3) Unless the By-Laws provide otherwise, the board may
26 provide, for prior or future services of any officer or employee,
27 reasonable compensation, pension or other benefits to such officer
28 or employee and pension or other benefits to a member of his fami-
29 ly or his beneficiaries. No officer or employee who is a director

1 may take part in any vote on his compensation for services ren-
2 dered or to be rendered the cooperative.

3 Section 25. Taking action without meeting.

4 Any action required by this chapter to be taken at a meeting
5 of the members or directors of a cooperative, or any other action
6 which may be taken at a meeting of the members, directors or
7 members of the executive committee, may be taken without a meet-
8 ing if a consent in writing setting forth the action so taken is
9 signed by all of the members, directors, or executive committee
10 members entitled to vote with respect to the subject matter there-
11 of. Such consent shall have the same force and effect as a unani-
12 mous vote at a meeting.

13 Section 26. Waiver of notice.

14 Whenever any notice is required to be given to any member
15 or director of a cooperative under the provisions of this chapter
16 or under the provisions of the articles or By-Laws of a coopera-
17 tive, a waiver thereof in writing signed by the person or persons
18 entitled to the notice, whether before or after the time stated
19 therein, is equivalent to the giving of the notice.

20 Section 27. Voting requirements of articles.

21 Whenever the articles require the vote of a greater propor-
22 tion of the members or shareholders than required by this chapter
23 the articles shall control.

24 Section 28. Action brought in right of cooperative by
25 member or shareholder.

26 (1) No action may be instituted or maintained in the right
27 of any cooperative by a member or shareholder unless he:

28 (a) Alleges in his complaint that he was a member or share-
29 holder of record when any part of the transaction of which he

1 complains took place, or that his membership or stock thereafter
2 devolved upon him by operation of law from a member or shareholder
3 at such time.

4 (b) Alleges in his complaint with particularity his efforts
5 to secure from the board such action as he desires. He shall
6 further allege that he has either informed the cooperative or
7 board in writing of the ultimate facts of each cause of action
8 against each director or that he has delivered to the cooperative
9 or board a copy of the complaint which he proposes to file. He
10 shall state the reasons for his failure to obtain such action or
11 the reasons for not making such effort.

12 (c) Files a complaint in such action within 20 days after
13 notification given to the cooperative or board as provided by
14 paragraph (b) of this subsection.

15 (2) The action shall not be dismissed or compromised
16 without the approval of the court.

17 (3) If anything is recovered or obtained as the result of
18 the action, whether by means of a compromise and settlement or
19 by a judgment, the court may, out of the proceeds of the action,
20 award the plaintiff the reasonable expenses of maintaining the
21 action, including reasonable attorneys' fees, and may direct the
22 plaintiff to account to the cooperative for the remainder of the
23 proceeds.

24 (4) In an action brought in the right of a cooperative by
25 fewer than three percent of the members or by holders of less than
26 three percent of any class of stock outstanding, the defendants
27 may require the plaintiff to give security for the reasonable
28 expenses of defending the action, including attorneys' fees.
29 The amount of the security may thereafter be increased or decreased

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1 in the discretion of the court upon showing that the security
2 provided is or may be inadequate or is excessive.

3 Section 29. Cooperative contracts.

4 (1) Contracts for any of the following purposes, whether
5 contained in the By-Laws or separately written, are valid when
6 made between a cooperative and any member in which such member
7 agrees to:

8 (a) Sell, market or deliver to or through the cooperative
9 or any facilities furnished by it, all or any specified part of
10 products produced or to be produced either by him or under his
11 control.

12 (b) Authorize the cooperative or any facilities furnished
13 by it to act for him in any manner with respect to all or any
14 specified part of such products.

15 (c) Buy or procure from or through the cooperative or any
16 facilities furnished by it, all or any specified part of goods
17 or services to be bought or procured by him.

18 (d) Authorize the cooperative or any facilities furnished
19 by it to act for him in any manner in the procurement of goods or
20 the procurement of performance of services.

21 (2) The contract referred to in subsection (1) of this
22 section may fix and require liquidated damages to be paid by the
23 member to the cooperative in the event of his breach of the
24 contract. Liquidated damages may be a percentage of the value or
25 a specific amount per unit of the products, goods or services
26 involved by the breach, or a specific sum.

27 (3) Two or more cooperatives may contract and act in asso-
28 ciation, corporate or otherwise, to perform collectively any of
29 their powers or purposes authorized by this chapter.

1 Section 30. Filing cooperative contracts.

2 (1) A cooperative may file any contract authorized by this
3 Act, in the office of the precinct recorder of the precinct in
4 which the member resides or in which products covered by that
5 contract have been or are to be produced. If the cooperative has
6 substantially uniform contracts with more than one member residing
7 or producing such products in any precinct, it may, in lieu of
8 filing the original contracts, file:

9 (a) A true copy of the uniform contract; and

10 (b) A sworn list or sworn lists of the names of members
11 who have executed such contract and who reside or produce such
12 products in that precinct, and the effective date of the contract
13 as to each such member.

14 (2) The precinct recorder shall number consecutively and
15 file each such contract, and shall record alphabetically in a book
16 to be kept for that purpose and available for public inspection the
17 name of each party to that contract and enter opposite that name
18 the file number of the contract and its effective date as to that
19 party. For filing such contract the fee is the same as for filing
20 a chattel mortgage, and for recording names of parties to such
21 contract the fee is two cents for each name.

22 (3) Filing and recording pursuant to this section shall
23 operate as constructive notice to all persons of the existence
24 and contents of the contract. Any right, title, interest or lien
25 created as to the products covered by the contract subsequent to
26 such filing and recording is subject to the cooperative's right,
27 title or interest under that contract. If the member creates any
28 mortgage upon any such products subsequent to such contract filing
29 and recording, and if the member and the mortgagee jointly notify

1 the cooperative in writing of the existence and amount of the
2 mortgage, all payments which after such notice become due from
3 the cooperative to that member by reason of the cooperative's
4 sale or other handling of those products shall be paid by the
5 cooperative to the mortgagee until the amount of the mortgage
6 has been paid, and the balance thereafter shall be paid to the
7 member.

8 (4) When a contract filed under this section has been
9 terminated in any manner, the cooperative shall give, upon demand,
10 a statement of termination to the member party to the contract,
11 who may file the statement in the office of the precinct recorder
12 where the contract was originally filed. The precinct recorder
13 shall stamp "Expired" after the name of the member in the alpha-
14 betical record. The fee for the filing and stamping is 25 cents.
15 A cooperative may file at any time in the office of the precinct
16 recorder where the contract was originally filed, a sworn list of
17 the names of all persons whose contracts have been terminated in
18 any manner other than by expiration of their term, and the
19 precinct recorder shall stamp "Expired" after the name of each of
20 those persons in the alphabetical record. For such filing and
21 stamping the precinct recorder shall receive a fee of two cents
22 for each such name.

23 Section 31. Relief against breach or threatened breach of
24 contract; penalty for interference.

25 (1) In the event of a breach or threatened breach of a
26 cooperative contract authorized by this Act, the cooperative is
27 entitled to an injunction to prevent the breach or any further
28 breach thereof, and to a decree of specific performance thereof.
29 Upon filing of a verified complaint showing the breach or threat-

1 ened breach, and upon filing a sufficient bond, the cooperative
2 is entitled to a temporary restraining order.

3 (2) Any person who, with knowledge that a contract exists,
4 induces or attempts to induce any member to breach the contract
5 with the cooperative, or who in any manner aids a breach of the
6 contract, is liable to the cooperative for damages caused by such
7 interference. The cooperative is also entitled to an injunction
8 to prevent any interference or further interference with the
9 contract.

10 Section 32. Action for civil penalty for inducing breach
11 of contract with cooperative or spreading false reports
12 about cooperative.

13 In addition to the remedies provided in subsection (2) of
14 Section 31, any person who knowingly and maliciously induces or
15 attempts to induce any member of a cooperative to breach his
16 contract with the cooperative authorized by this Act, or who
17 knowingly and maliciously spreads any false report about the
18 finances or management of a cooperative is liable, in a civil
19 action, to the cooperative aggrieved, in the penal sum of \$500
20 for each offense.

21 Section 33. Apportionment and distribution of net proceeds
22 or savings or net losses.

23 (1) The net proceeds or savings of a cooperative shall be
24 apportioned, distributed and paid periodically to those persons
25 entitled to receive them, at such times and in such reasonable
26 manner as the By-Laws shall provide; except that net proceeds or
27 savings on patronage of the cooperative by its members shall be
28 apportioned and distributed among those members in accordance
with the ratio which each member's patronage during the period

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1 involved bears to total patronage by all members during that
2 period. The By-Laws may contain any reasonable provisions for
3 the apportionment and charging of net losses. For the purposes
4 of this section work performed as a member of a workers' coopera-
5 tive shall be deemed to be patronage of that cooperative.

6 (2) The apportionment, distribution and payment of net pro-
7 ceeds or savings required by subsection (1) of this section may
8 be in cash, credits, capital stock, certificates of interest,
9 revolving fund certificates, letters of advice or other securities
10 or certificates issued by the cooperative or by any affiliated
11 domestic or foreign cooperative association whether or not incor-
12 porated under this chapter.

13 (3) Apportionment and distribution of its net proceeds or
14 savings or net losses may be separately determined for, and be
15 based upon patronage of, single or multiple pools, particular
16 departments of the cooperative, or as to particular commodities,
17 supplies or services, or such apportionment and distribution may
18 be based upon classification of patronage according to the type
19 thereof.

20 (4) A cooperative may provide in its By-Laws the minimum
21 amount of any single patronage transaction which shall be taken
22 into account for the purpose of participation in allocation and
23 distribution of net proceeds or savings or net losses under
24 this section.

25 (5) For the purposes of this section net proceeds or savings
26 or net losses shall be computed in accordance with generally ac-
27 cepted accounting principles applicable to cooperative corpora-
28 tions, and after deducting from gross proceeds or savings any
29 dividends paid upon capital stock.

1 Section 34. Unclaimed distribution, redemptions or payments.

2 Any distribution of net margins by a cooperative or any
3 redemption of or payment based upon any security, which remains
4 unclaimed six years after the date authorized for payment, re-
5 demption or retirement may be forfeited by the board. Any amount
6 forfeited may revert to the cooperative, if, at least six months
7 prior to the declared date of forfeiture, notice that the payment
8 is available has been mailed to the last known address of the
9 person shown by the cooperative's records to be entitled thereto
10 or, if the address is unknown, is published as provided by law
11 for the publication of summons.

12 Section 35. Sale or other disposition of entire assets.

13 (1) The sale, lease, exchange or other disposition of all,
14 or substantially all, the property and assets of a cooperative,
15 when made in the usual and regular course of the business of the
16 cooperative, may be made on such terms and conditions and for
17 such consideration, which may consist in whole or in part of
18 money or property, real or personal, including shares of any
19 other cooperative, corporation or association, domestic or foreign,
20 as shall be authorized by its board; and in such case no authori-
21 zation or consent of members or shareholders is required.

22 (2) A sale, lease, exchange or other disposition of all,
23 or substantially all, the property and assets, with or without
24 the good will, of a cooperative, if not made in the usual and
25 regular course of its business, may be made upon such terms and
26 for such consideration, which may consist in whole or in part of
27 money or property, real or personal, including shares of any other
28 cooperative, corporation or association, as may be authorized in
29 the following manner:

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1 (a) The board shall adopt a resolution recommending the
2 sale, lease, exchange or other disposition and directing the
3 submission thereof to a vote at a meeting of members, which may
4 be either an annual or a special meeting, or if there are share-
5 holders the submission shall be to a joint meeting of members
6 and shareholders.

7 (b) Written or printed notice shall be given to each member
8 and to each shareholder within the time and in the manner pro-
9 vided herein for the giving of notice of meetings of members, and
10 shall state that the purpose, or one of the purposes, of the
11 meeting is to consider the proposed sale, lease, exchange or other
12 disposition.

13 (c) At the meeting, the members, by affirmative vote of a
14 majority of the member votes cast thereon, and the shareholders,
15 by affirmative vote of a majority of the shareholder votes en-
16 titled to be voted thereon, may approve the sale, lease, exchange
17 or other disposition, and may fix, or may authorize the board to
18 fix, any or all of the terms and conditions thereof and the con-
19 sideration to be received by the cooperative therefor.

20 (3) After authorization by votes of members and shareholders,
21 the board nevertheless, in its discretion, may abandon the sale,
22 lease, exchange or other disposition of assets subject to the
23 rights of third parties under any contracts relating thereto,
24 without further action or approval by members or shareholders.

25 Section 36. Books and records.

26 (1) A cooperative shall keep correct and complete books
27 and records of account, and shall keep minutes of the proceedings
28 of its members, board and executive committee. It shall keep at
29 its principal office records of the names and addresses of all

1 members and shareholders. At any reasonable time, any member
2 or shareholder, or his agent or attorney, upon written notice
3 stating the purposes thereof, may examine for any proper purpose
4 any books or records pertinent to the purpose specified in the
5 notice and may make extracts therefrom.

6 (2) In any action or proceeding to enforce the rights of
7 members or shareholders provided in this section, if the member
8 or shareholder prevails in the action or proceeding, there shall
9 be taxed and allowed to such member or shareholder, as a part of
10 the costs thereof, a reasonable amount to be fixed by the court
11 as attorney's fees for the prosecution of the action or pro-
12 ceeding.

13 Section 37. Annual report.

14 (1) Each cooperative shall file with the Department of
15 Commerce on or before August 15 of each year an annual report
16 signed by a principal officer or the general manager setting forth:

17 (a) Its name and the complete address of its principal
18 place of business in this state.

19 (b) The name of its registered agent and address of its
20 registered office.

21 (c) The names and addresses of its principal officers and
22 its general manager, if any.

23 (d) A statement of the aggregate number of shares which the
24 cooperative has authority to issue, itemized by classes, par
25 value of shares, shares without par value.

26 (e) A statement of the aggregate number of shares sub-
27 scribed, but not paid up, itemized by classes, par value of shares,
28 shares without par value.

29 (f) A statement of the aggregate number of paid-up shares,

1 itemized by classes, par value of shares, shares without par
2 value.

3 (g) For cooperatives established without capital stock the
4 annual report shall contain a statement as to the amount of the
5 membership fee and a statement as to the number of memberships
6 which are issued.

7 (h) A brief statement of the character of the business in
8 which the cooperative is actually engaged in this state.

9 (2) The annual report shall be made on forms furnished by
10 the Department of Commerce, and the information therein contained
11 shall be given as of June 30 of the preceding year.

12 (3) If the Department of Commerce finds that such annual
13 report conforms to the requirements of this chapter, the same
14 shall be filed. If it does not so conform, it shall be returned
15 to the cooperative for any necessary corrections, in which event
16 the penalties hereinafter prescribed for failure to file such
17 statement within the time hereinabove provided shall not apply,
18 if such statement is corrected to conform to the requirements of
19 this chapter and returned to the Department of Commerce within
20 60 days after such report has been returned by the Department of
21 Commerce.

22 FORMATION OF COOPERATIVES

23 Section 38. Procedure for incorporation.

24 (1) Three or more natural persons of the age of 19 years or
25 more, may act as incorporators of a cooperative by signing, veri-
26 fying and delivering in duplicate to the head of the Department
27 of Commerce articles for such cooperative.

28 (2) If the head of the Department of Commerce finds that the
29 articles conform to law, he shall, when all fees have been paid as

1 in this chapter prescribed:

2 (a) Stamp on each of the duplicate originals the word
3 "Filed" and the date of the filing thereof.

4 (b) File one of the duplicate originals in his office.

5 (c) Issue a certificate of incorporation to which he
6 shall affix the other duplicate original.

7 (3) The certificate of incorporation, together with the
8 duplicate original affixed thereto by the head of the Department
9 of Commerce shall be returned to the incorporators or their
10 representative.

11 (4) Upon the issuance of the certificate of incorporation,
12 the corporate existence shall begin, and the certificate of
13 incorporation is conclusive evidence that all conditions prece-
14 dent required to be performed by the incorporators have been
15 complied with and that the cooperative has been incorporated
16 under this chapter, except as against this state in a proceeding
17 to cancel or revoke the certificate of incorporation or for in-
18 voluntary dissolution of the cooperative.

19 Section 39. Articles of incorporation.

20 (1) The articles of incorporation shall set forth:

21 (a) The name of the cooperative and that it is a cooperative.

22 (b) The period of duration, which may be perpetual.

23 (c) The purposes for which the cooperative is organized.

24 (d) Whether the cooperative is organized with or without
25 membership stock the amount of the membership fee, and the limi-
26 tations, if any, on transfer of a membership.

27 (e) The number and par value, if any, of shares of each
28 authorized class of stock, and if more than one class is author-
29 ized, the designation, preferences, limitations and relative

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1 rights of each class.

2 (f) Which classes of stock, if any, are membership stock,
3 and the limitations upon transfer, if any, applicable to such
4 stock.

5 (g) Any limitation of the right to acquire or recall any
6 stock.

7 (h) The basis of distribution of assets in the event of
8 dissolution or liquidation.

9 (i) The address of its initial registered office, including
10 street and number, if any, and the name of its initial registered
11 agent at such address.

12 (j) The number of directors, not less than three, constitut-
13 ing the initial board of directors and the names and addresses,
14 including street and number, if any, of the persons who are to
15 serve as directors until the first annual meeting of the members
16 or until their successors be elected and take office.

17 (k) The name and address, including street and number, if
18 any, of each incorporator.

19 (2) It is not necessary to set forth in the articles any of
20 the corporate powers enumerated in this chapter. The articles may
21 include additional provisions, not inconsistent with law, for the
22 regulation of the internal affairs of the cooperative, including
23 any provision which under this chapter is required or permitted
24 to be set forth in the By-Laws. Any provision required or per-
25 mitted in the By-Laws has equal force and effect if stated in the
26 articles. Whenever a provision of the articles is inconsistent
27 with a By-Law, the articles control.

28 Section 40. Organization meeting of directors.

29 After the issuance of the certificate of incorporation an

1 organization meeting of the board of directors named in the
2 articles shall be held, either within or without this state, at
3 the call of a majority of the incorporators, for the purpose of
4 adopting By-Laws, electing officers and the transaction of such
5 other business as may come before the meeting.

6 AMENDMENT OF ARTICLES

7 Section 41. Amendment of articles.

8 (1) A cooperative may amend its articles from time to time
9 in any and as many respects as may be desired, so long as its
10 articles as amended contain only such provisions as might be law-
11 fully contained in original articles at the time of making the
12 amendment, and, if a change in shares or the rights of shareholders
13 or members, or an exchange, reclassification or cancelation of
14 shares or rights of shareholders or members is to be made, such
15 provisions as may be necessary to effect the change, exchange,
16 reclassification or cancelation.

17 (2) Amendments to the articles shall be made in the following
18 manner:

19 (a) The board shall adopt a resolution setting forth the
20 proposed amendment and directing that it be submitted to a vote
21 at a meeting of the members of the cooperative, which may be either
22 an annual or a special meeting.

23 (b) Written or printed notice setting forth the proposed
24 amendment or a summary of the changes to be effected thereby shall
25 be given to each member of record within the time and in the manner
26 provided herein for the giving of notice of meetings of members.
27 If the meeting is an annual meeting, the proposed amendment or
28 the summary may be included in the notice of the annual meeting.

29 (c) At the meeting a vote of the members shall be taken on

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1 the proposed amendment. The proposed amendment is adopted upon
2 receiving the affirmative vote of a majority of the member votes
3 cast thereon, unless shareholders are entitled by this Act to vote
4 on the proposed amendment, in which event the proposed amendment
5 is adopted upon receiving the approval of shareholders as speci-
6 fied herein, as well as the affirmative vote of a majority of
7 member votes cast thereon. Any number of amendments may be sub-
8 mitted to the members and voted upon by them at one meeting.

9 Section 42. Shareholder voting on amendments to articles.

10 (1) If a proposed amendment to articles would affect a
11 shareholder, such shareholder, whether or not permitted to vote by
12 the articles, is entitled to cast one vote on the amendment re-
13 gardless of the dollar amount of stock or number of affected
14 classes of stock held by him; except that the articles may permit
15 such affected shareholder to cast one vote for each share of stock
16 he holds other than membership stock. A member holding stock
17 affected by a proposed amendment may vote both as a member and
18 as an affected shareholder.

19 (2) If any shareholder is entitled to vote on a proposed
20 amendment, the meeting at which that proposed amendment is to be
21 voted upon shall be a joint meeting of members and affected share-
22 holders, and notice of that meeting together with a copy of the
23 proposed amendment or a summary of the changes to be effected
24 thereby shall be given to each such shareholder of record entitled
25 to vote thereon within the time and in the manner provided in
26 this Act for the giving of notice of meetings of members. The
27 proposed amendment is adopted only if it receives the affirmative
28 vote of a majority of the votes of the affected shareholders en-
29 titled to vote thereon.

1 (3) For the purpose of this section, a shareholder is
2 affected as to any class of stock owned by him only if an amend-
3 ment would expressly:

4 (a) Decrease the dividends to which that class may be
5 entitled or change the method by which the dividend rate on that
6 class is fixed.

7 (b) Restrict rights to transfer that class.

8 (c) Give to another existing or any new class of stock or
9 equity interest not previously entitled thereto any preference
10 as to dividends or upon dissolution which is the same or higher
11 than preferences of that class.

12 (d) Change the par value of shares of that class or of any
13 other class having the same or higher preferences as to dividends
14 or upon dissolution.

15 (e) Increase the number of authorized shares of any class
16 having a higher preference as to dividends or upon dissolution.

17 (f) Require or permit an exchange of shares of any class
18 with lower preferences as to dividends or upon dissolution for
19 shares of that class or any other class with the same or higher
20 preferences.

21 Section 43. Articles of amendment; execution and filing;
22 effect of amendment; Restated articles.

23 (1) Following adoption of an amendment or amendments to
24 articles as provided in this chapter, articles of amendment shall
25 be executed in duplicate by the cooperative by its president or a
26 vice president and by its secretary or an assistant secretary, and
27 verified by one of the officers signing such articles, and shall
28 set forth:

29 (a) The name of the cooperative.

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1 (b) If an amendment changes any provision of the original or
2 amended articles, an identification by reference or description of
3 the affected provision and a statement of its text as it is
4 amended to read. If an amendment strikes or deletes any provision
5 of the original or amended articles, an identification by reference
6 or description of the provision so stricken or deleted and a state-
7 ment that it is stricken or deleted. If the amendment is an
8 addition to the original or amended articles, a statement of that
9 fact and the full text of each provision added.

10 (c) The date of the adoption of the amendment by the members.

11 (d) The numbers of members voting for and against the
12 amendment.

13 (e) If affected shareholders had the right to vote, the
14 number of affected shareholders, the number of shareholder votes
15 entitled to be voted thereon, and the numbers of such votes cast
16 for and against the amendment.

17 (2) Duplicate originals of the articles of amendment shall
18 be filed, and a certificate of amendment shall be issued and
19 delivered to the head of the Department of Commerce.

20 (3) No amendment shall affect any existing cause of action
21 in favor of or against the cooperative, or any pending suit to
22 which the cooperative is a party, or the existing rights of persons
23 other than members or affected shareholders; and, if the coopera-
24 tive's name is changed by amendment, no suit brought by or against
25 the cooperative under its former name shall abate for that reason.

26 (4) The provisions of Chapter 126, SLA 1957 relating to
27 restated articles of business corporations shall apply to coopera-
28 tives, except that the restated articles need not set forth the
29 amount of stated capital.

MERGER AND CONSOLIDATION; CONVERSION
OF CORPORATION INTO COOPERATIVE

Section 44. Definitions.

As used in the following sections:

(1) "New cooperative" means the new cooperative provided for in the plan of consolidation.

(2) "Surviving cooperative" means the cooperative designated in the plan of merger as the surviving cooperative.

Section 45. Merger and consolidation.

(1) Any two or more cooperatives may merge or consolidate pursuant to a plan of merger or consolidation adopted in the manner provided in this section.

(2) The board of each cooperative shall, by resolution adopted by each such board, approve a plan of merger or consolidation setting forth:

(a) The names of the cooperatives proposing to merge or consolidate, and the name of the cooperative into which they propose to merge or the name of the new cooperative into which they propose to consolidate.

(b) The terms and conditions of the proposed merger or consolidation.

(c) The effect of the proposed merger or consolidation on all members and shareholders of each of the cooperatives.

(d) In the case of a plan for consolidation, the articles of the new cooperative, which shall include all of the statements required to be set forth in articles for cooperatives organized under this chapter.

(e) Such other provisions with respect to the proposed merger or consolidation as are considered necessary or desirable.

1 (3) The board of each cooperative, upon approving the plan
2 of merger or plan of consolidation, shall by resolution direct
3 that the plan be submitted by a vote at a meeting of members and
4 shareholders, or if there are no shareholders then an annual or a
5 special meeting of members. Written or printed notice shall be
6 given to each member and each shareholder in the manner provided
7 in this chapter for meetings of members, and adoption of the plan
8 shall be by affirmative vote of a majority of the member votes
9 cast thereon and affirmative vote of a majority of shareholder
10 votes entitled to be cast thereon.

11 (4) After adoption of the plan, and at any time prior to
12 the filing of the articles of merger or consolidation, the merger
13 or consolidation may be abandoned pursuant to provisions therefor,
14 if any, set forth in the plan of merger or consolidation.

15 Section 46. Articles of merger or consolidation.

16 (1) Upon adoption of the plan of merger or consolidation,
17 articles of merger or articles of consolidation, as the case may
18 be, shall be executed in duplicate by each cooperative by its
19 president or a vice president and by its secretary or an assistant
20 secretary, and verified by one of the officers of each cooperative
21 signing such articles, and shall set forth:

22 (a) The plan of merger or plan of consolidation.

23 (b) The date of adoption of the plan.

24 (c) As to each cooperative, the numbers of member votes cast
25 for and against the plan.

26 (d) As to each cooperative, the number, if any, of share-
27 holders, the number of shareholder votes entitled to be voted on
28 the plan, and the numbers of such shareholder votes cast for and
29 against the plan.

1 (2) Duplicate originals of the articles of merger or articles
2 of consolidation shall be delivered to the head of the Department
3 of Commerce who, if he finds the articles to conform to law, shall
4 when all fees and charges have been paid as in this chapter
5 prescribed.

6 (a) Indorse on each of the duplicate originals the word
7 "Filed" and the date of the filing thereof.

8 (b) File one of the duplicate originals in his office.

9 (c) Issue and deliver to the surviving or new cooperative,
10 as the case may be, or to its representative, a certificate of
11 merger or a certificate of consolidation to which he shall affix
12 the other duplicate original. The merger or consolidation shall
13 be effected upon the issuance of such certificate.

14 Section 47. Effect of merger or consolidation.

15 When the merger or consolidation has been effected:

16 (1) The several cooperatives parties to the plan of merger
17 or consolidation shall be a single cooperative, which, in the case
18 of a merger, shall be that cooperative designated in the plan of
19 merger as the surviving cooperative, and, in the case of a consoli-
20 dation, shall be the new cooperative provided for in the plan of
21 consolidation.

22 (2) The separate existence of all cooperatives parties to
23 the plan of merger or consolidation, except the surviving or new
24 cooperative, shall cease.

25 (3) The surviving or new cooperative shall thereupon and
26 thereafter possess all the rights, privileges, immunities and
27 franchises, as well of a public as of a private nature, of each
28 of the merging or consolidating cooperatives; and all property,
29 real, personal and mixed, and all debts due on whatever account,

1 including subscriptions to shares, and all other choses in action,
2 and all and every other interest, of or belonging to or due to
3 each of the cooperatives so merged or consolidated, shall be deemed
4 to be transferred to and vested in such single cooperative without
5 further act or deed; and the title to any real estate, or any
6 interest therein, vested in any of such cooperatives shall not
7 revert or be in any way impaired by reason of the merger or
8 consolidation.

9 (4) The surviving or new cooperative is thenceforth respon-
10 sible and liable for all the liabilities and obligations of each
11 of the cooperatives so merged or consolidated; and any claim
12 existing or action or proceeding pending by or against any of such
13 cooperatives may be prosecuted as if the merger or consolidation
14 had not taken place, or the surviving or new cooperative may be
15 substituted in its place. Neither the rights of creditors nor any
16 liens upon the property of any such cooperative are impaired by
17 the merger or consolidation.

18 (5) In the case of a merger, the articles of the surviving
19 cooperative shall be deemed to be amended to the extent, if any,
20 that changes in its articles are stated in the plan of merger; and
21 in case of a consolidation, the statements set forth in the
22 articles of consolidation and which are required or permitted to be
23 set forth in the articles of cooperatives organized under this
24 chapter shall be deemed to be the original articles of the new
25 cooperative.

26 Section 48. Merger or consolidation of cooperatives and
27 domestic and foreign corporations.

28 (1) One or more cooperatives may merge or consolidate with
29 or into, as the case may be, one or more of the following classes

1 of business organizations:

2 (a) Domestic corporations, if such corporations comply with
3 the provisions of Chap. 126, SLA 1957 relating to merger or
4 consolidation.

5 (b) Foreign cooperatives if such merger or consolidation is
6 permitted by the laws of the state under which each such foreign
7 cooperative is organized and each such foreign cooperative com-
8 plies with the applicable provisions of such laws.

9 (c) Foreign business corporations if such merger or con-
10 solidation is permitted by the laws of the state under which each
11 such foreign corporation is organized and each such foreign cor-
12 poration complies with the applicable provisions of such laws.

13 (2) Each cooperative merging or consolidating pursuant to
14 this section shall comply with the provisions of this chapter
15 relating to merger or consolidation.

16 (3) If the surviving or new business corporation or coopera-
17 tive, as the case may be, is to be governed by the laws of any
18 state other than this state, it shall comply with the provisions
19 of Chap. 126, SLA 1957 with respect to foreign corporations if it
20 is to transact business in this state.

21 (4) The effect of the merger or consolidation shall:

22 (a) If the surviving or new corporation is a cooperative,
23 be the same as provided in this chapter for the merger or consoli-
24 dation of cooperatives.

25 (b) If the surviving or new corporation is a domestic cor-
26 poration, be the same as provided in Ch. 126, SLA 1957, for the
27 merger or consolidation of domestic corporations.

28 (c) If the surviving or new corporation or cooperative is to
29 be governed by the laws of any state other than this state, be the

1 same as in the case of the merger or consolidation of cooperatives
2 or domestic corporations, as the case may be, except in so far as
3 the laws of the other state provide otherwise.

4 Section 49. Conversion of corporation into cooperative.

5 A domestic corporation may convert itself into a cooperative
6 by adopting an amendment to its articles by which it elects to
7 become subject to this chapter, together with changes in its
8 articles required by this chapter and other changes permitted by
9 this chapter and other changes permitted by this chapter which it
10 may determine desirable. The amendment shall be adopted, filed,
11 and shall become effective, all as provided by the law then appli-
12 cable to the domestic corporation.

13 DISSOLUTION

14 Section 50. Voluntary dissolution by act of cooperative.

15 A cooperative may be dissolved by the act of the cooperative,
16 when authorized in the following manner:

17 (1) The board shall adopt a resolution directing that the
18 question of dissolution be submitted to a vote at a meeting of
19 members, which may be either an annual or a special meeting.

20 (2) Written or printed notice shall be given to each member
21 in the manner provided in this Act for the giving of notice of
22 meetings of members, and whether the meeting be an annual or
23 special meeting, shall state that the purpose, or one of the pur-
24 poses, of the meeting is to consider the advisability of dissolving
25 the cooperative.

26 (3) At the meeting a vote of members shall be taken on a
27 resolution to dissolve the cooperative. Adoption of the resolu-
28 tion shall be by affirmative vote of two-thirds of the member
29 votes cast on that resolution. The articles may permit shareholders

1 to vote on such a resolution for dissolution, and may fix the pro-
2 portion of authorized shareholder votes required for adoption
3 thereof.

4 (4) Upon the adoption of the resolution, a statement of
5 intent to dissolve shall be executed in duplicate by the cooperative
6 by its president or a vice president and by its secretary or an
7 assistant secretary, and verified by one of its officers signing
8 the statement, which statement shall set forth:

9 (a) The name of the cooperative.

10 (b) The names and respective addresses of its officers.

11 (c) The names and addresses of its directors.

12 (d) A copy of the resolution adopted authorizing the dissol-
13 ution of the cooperative.

14 (e) The date of the adoption of the resolution.

15 (f) The numbers of member votes for and against the reso-
16 lution.

17 (g) If shareholders were authorized to vote on the resolu-
18 tion, the total number of authorized shareholder votes, the
19 numbers of such votes cast for and against the resolution and the
20 number of such votes required by the articles for adoption thereof.

21 Section 51. Filing statement of intent to dissolve; effect.

22 (1) Duplicate originals of the statement of intent to dis-
23 solve shall be filed and handled by the Department of Commerce in
24 the same manner as is provided by Ch. 126, SLA 1957, with respect
25 to business corporations.

26 (2) The filing of a statement of intent to dissolve shall
27 have the same effect as to the cooperative as is provided by
28 Ch. 126, SLA 1957, for business corporations.

29 Section 52. Procedure after filing of statement of intent

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1 to dissolve.

2 After the filing by the Department of Commerce of a statement
3 of intent to dissolve:

4 (1) The cooperative shall proceed to collect its assets,
5 convey and dispose of such of its properties as are not to be
6 distributed in kind to its members or shareholders, pay, satisfy
7 and discharge its liabilities and obligations and do all other
8 acts required to liquidate its business and affairs, and, after
9 paying or adequately providing for the payment of all its obliga-
10 tions, distribute the remainder of its assets either in cash or in
11 kind, among the persons entitled to the same by law, the articles
12 and the By-Laws.

13 (2) The cooperative, at any time during the liquidation of
14 its business and affairs, may make application to a court of compe-
15 tent jurisdiction within the state and judicial subdivision in
16 which the registered office or principal place of business of the
17 cooperative is situated, to have the liquidation continued under
18 the supervision of the court as provided in this chapter.

19 Section 53. Revocation of voluntary dissolution proceedings
20 by act of cooperative.

21 A cooperative, at any time prior to the issuance of a certi-
22 ficate of dissolution by the Department of Commerce, may revoke
23 voluntary dissolution proceedings theretofore taken, by adoption
24 of a resolution of revocation in the same manner and by the same
25 required vote of members and shareholders as are required by this
26 chapter for adoption of a resolution to dissolve.

27 (2) Upon the adoption of the resolution, a statement of
28 revocation of voluntary dissolution proceedings shall be executed
29 in duplicate by the cooperative by its president or a vice presi-

1 dent and by its secretary or an assistant secretary, and verified
2 by one of the officers signing the statement, which statement
3 shall set forth a copy of the adopted resolution and other perti-
4 nent information as required by Section 50 to be set forth in a
5 statement of intent to dissolve.

6 Section 54. Filing statement of revocation of voluntary
7 dissolution proceedings; effect.

8 (1) Duplicate originals of the statement of revocation of
9 voluntary dissolution proceedings shall be handled by the Depart-
10 ment of Commerce in the same manner as provided by this chapter
11 for filing of a statement of intent to dissolve.

12 (2) Upon the filing by the Department of Commerce of the
13 statement of revocation of voluntary dissolution proceedings, a
14 revocation of the voluntary dissolution proceedings becomes ef-
15 fective and the cooperative may again carry on its business.

16 Section 55. Articles of dissolution.

17 If voluntary dissolution proceedings have not been revoked,
18 then when all debts, liabilities and obligations of the coopera-
19 tive have been paid and discharged, or adequate provision has been
20 made therefor, and all of the remaining property and assets of the
21 cooperative have been distributed to the persons entitled there-
22 to, articles of dissolution shall be executed in duplicate by the
23 cooperative by its president or a vice president and its secretary
24 or assistant secretary, and verified by one of the officers
25 signing the articles, which articles shall set forth:

26 (1) The name of the cooperative.

27 (2) That the Department of Commerce has theretofore filed a
28 statement of intent to dissolve the cooperative, and the date on
29 which the statement was filed.

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1 (3) That all the property and assets of the cooperative re-
2 maining after payment or discharge, or adequate provision therefor
3 of all debts, obligations and liabilities of the cooperative have
4 been distributed to the persons entitled thereto in accordance
5 with their respective rights and interests.

6 (4) That there are no suits pending against the cooperative
7 in any court, or that adequate provision has been made for the
8 satisfaction of any judgment, order or decree which may be
9 entered against it in any pending suit.

10 Section 56. Filing articles of dissolution; effect.

11 (1) Duplicate originals of the articles of dissolution
12 shall be filed and a certificate of dissolution shall be issued
13 in the same manner as provided by Ch. 126, SLA 1957 for business
14 corporations.

15 (2) The certificate of dissolution together with the
16 duplicate original of the articles of dissolution affixed thereto
17 by the Department of Commerce, shall be returned to the represen-
18 tative of the dissolved cooperative. Upon the issuance of the
19 certificate of dissolution the existence of the cooperative shall
20 cease, except for the purpose of suits, other proceedings and
21 appropriate corporate action by members, shareholder, directors
22 and officers as provided in this chapter.

23 Section 57. Involuntary dissolution.

24 The provisions of Ch. 126, SLA 1957, relative to involuntary
25 dissolution of business corporations apply to cooperatives.

26 Section 58. Jurisdiction of court to liquidate assets and
27 business of cooperative.

28 (1) In addition to any other instances in which the law
29 provides such power, a court has full power to liquidate the

1 assets and business of a cooperative:

2 (a) In an action by a member or shareholder when it is
3 established that:

4 (A) The members are deadlocked in voting power, and have
5 failed, for a period which includes at least two consecutive
6 annual meeting dates, to elect successors to directors whose
7 terms have expired or would have expired upon the election of
8 their successors; or

9 (B) The corporate assets are being misapplied or wasted.

10 (b) In an action by a creditor:

11 (A) When the claim of the creditor has been reduced to
12 judgment and an execution thereon returned unsatisfied and it is
13 established that the cooperative is insolvent; or

14 (B) When the cooperative has admitted in writing that the
15 claim of the creditor is due and owing and it is established
16 that the cooperative is insolvent.

17 (c) Upon application by a cooperative which has filed a
18 statement of intent to dissolve as provided in this chapter, to
19 have its liquidation continued under the supervision of the court.

20 (d) When an action has been filed by the Attorney General
21 to dissolve a cooperative and it is established that liquidation
22 of its business and affairs should precede the entry of a decree
23 of dissolution.

24 (2) Proceedings under paragraph (a), (b) or (c) of sub-
25 section (1) of this section shall be brought in the judicial
26 district in which the registered office or the principal office
27 of the cooperative is situated.

28 (3) It is not necessary to make members or shareholders
29 parties to any action or proceeding under this section unless

1 relief is sought against them personally.

2 Section 59. Deposit with Department of Commerce of amount
3 due persons who cannot be found.

4 Upon the voluntary or involuntary dissolution of a coopera-
5 tive, the portion of the assets distributable to a creditor,
6 member, shareholder or patron or other person unknown or who
7 cannot be found, or who is under disability and there is no
8 person legally competent to receive such distributive portion,
9 shall be reduced to cash, and within six months after the final
10 dividend in the liquidation or winding up is payable, shall be
11 deposited with the Department of Commerce. The receiver or other
12 liquidating agent shall prepare in duplicate and under oath a
13 statement containing the names and last known addresses of the
14 persons entitled to the funds, and such statements shall be filed
15 with the Department of Commerce. The funds shall thereupon
16 escheat to and become the property of the State of Alaska. The
17 owner, his heirs or personal representatives, may reclaim any
18 funds so deposited in the manner provided for estates which have
19 escheated to the state.

20 FOREIGN COOPERATIVES

21 Section 60. Admission of foreign cooperatives.

22 A foreign cooperative which has a member or members residing
23 in this state, and which distributes its proceeds and savings
24 according to either this chapter or the law of the state where
25 incorporated, is entitled to all rights, exemptions and privileges
26 of a cooperative organized under this chapter, if it is authorized
27 to do business in this state as provided in Ch. 126, SLA 1957.

28 FEES AND CHARGES

29 Section 61. Annual license fee.

1 (1) Each cooperative not organized and operated for non-profit
2 religious, charitable, cemetery, or educational purposes, shall pay
3 to the Department of Commerce an annual license fee as stated in
4 this section. Such fee shall be paid prior to August 15 in advance
5 for the fiscal year beginning July 1 of each year. In case of new
6 cooperatives formed during the fiscal year, the first year's fee
7 shall be proportionate to such fraction of that fiscal year.

8 (2) The license fee of each such cooperative authorized
9 by its articles to issue capital stock shall be graduated in
10 accordance with the amount of capital stock authorized in its
11 articles, as follows:

12 Amount of authorized capital stock

18	Over	But not Over	Fee
14	\$ 0	\$ 5,000	\$ 5.00
15	5,000	10,000	7.50
16	10,000	25,000	10.00
17	25,000	50,000	15.00
18	50,000	100,000	25.00
19	100,000	250,000	35.00
20	250,000	500,000	50.00
21	500,000	1,000,000	62.50
22	1,000,000	2,000,000	87.50
23	2,000,000		100.00

24 For the purpose of determining the amount of such license
25 fee payable by any cooperative having shares of stock without par
26 value, but for no other purpose, such shares of stock shall be
27 deemed equivalent to shares having a par value of \$10 each.

28 (3) The license fee of each such cooperative having no
29 authorized shares of capital stock is \$5.

1 (4) If such fee is not paid prior to August 15, then interest
2 at the rate of six percent per year shall be collected by the
3 Department of Commerce.

4 Section 62. Miscellaneous fees and charges.

5 (1) The Department of Commerce shall charge and collect
6 from any cooperative for filing:

7 (a) Articles of incorporation or articles of consolidation
8 for a new cooperative, \$10, together with the proportionate part
9 of the annual license fee, as prescribed above, payable for the
10 succeeding fraction of that fiscal year.

11 (b) Articles of amendment, restated articles, or articles
12 of merger, \$5. If such articles provide for an increase of the
13 amount of authorized capital stock of the cooperative, the filing
14 cooperative shall also pay the proportionate part of the annual
15 license fee, as prescribed above, for the succeeding fraction of
16 that fiscal year, payable by a cooperative whose authorized
17 shares equal the newly increased authorized shares of the filing
18 cooperative, less the annual license fee already paid for that
19 succeeding fraction of the fiscal year by the filing cooperative.
20 Filing any such articles decreasing the authorized shares does
21 not reduce the annual license fee of the filing cooperative until
22 the beginning of the fiscal year next following that in which the
23 articles were filed.

24 (c) Statement of intent to dissolve, \$1.

25 (d) Statement of revocation of voluntary dissolution
26 proceedings, \$1

27 (e) Articles of dissolution, \$5.

28 (f) Any other statement, except an annual statement, \$1.

29 (2) The Department of Commerce shall not file any document

1 relating to any cooperative organized under or subject to the
2 provisions of this chapter, until all fees and charges provided
3 to be paid in connection therewith have been paid to him or while
4 the cooperative is in default in the payment of any fees, charges
5 or penalties provided in this chapter to be paid by or assessed
6 against it.

7 MISCELLANEOUS PROVISIONS

8 Section 63. Powers of Department of Commerce.

9 The Department of Commerce has the power and authority
10 reasonably necessary to administer this chapter efficiently and
11 to perform the duties imposed by this chapter.

12 Section 64. Appeal.

13 If the Department of Commerce fails to approve any articles
14 of incorporation, amendment, merger, consolidation or dissolu-
15 tion, or any other document required by this chapter to be approved
16 before the document is filed, the procedure and remedies shall be
17 the same as specified as to business corporations by Ch. 126, SLA
18 1957.

19 Section 65. Public policy; cooperatives are not in restraint
20 of trade.

21 It is the public policy of the State of Alaska to encourage
22 the efficient production and distribution of agricultural and
23 other products derived from natural resources or labor resources
24 of this state. Accordingly, no cooperative which operates in
25 compliance with the provisions of this chapter and which does not
26 during its fiscal year market products for nonmember patrons in
27 an amount greater in value than the products marketed for its
28 members, shall be deemed to be a conspiracy or combination in
29 restraint of trade, or an illegal monopoly; nor shall the contracts

1 of such cooperative authorized by this chapter, whether or not
2 required by the cooperative as a condition of membership or of
3 doing business with the cooperative, be construed as an unlawful
4 restraint of trade, or as part of a conspiracy or combination to
5 accomplish an improper or illegal purpose or act.

6 Section 66. Use of term "cooperative".

7 (1) No person other than a cooperative association incor-
8 porated under this chapter or a previous Act of this state shall
9 use the term "cooperative", or any variation thereof, as part of
10 its corporate or other business name or title; provided, however,
11 that this section shall not apply to cooperatives organized to
12 generate and transmit electric energy and power or to furnish
13 electric or telephone service.

14 (2) Any violation of this section may be enjoined upon suit
15 by any cooperative, without a showing of any damage to itself.

16 Section 67. Application of chapter.

17 The provisions of this chapter apply to the fullest extent
18 permitted by the laws and Constitution of the United States and
19 of the State of Alaska, to all existing cooperative associations
20 incorporated under any previously existing Act of this state
21 relating to incorporation of cooperative associations; provided,
22 however, that this section shall not apply to cooperatives
23 organized to generate and transmit electric energy and power or to
24 furnish electric or telephone service.

25 Section 68. Effect of amendment or repeal of Alaska
26 Cooperative Corporation Act.

27 The Alaska Cooperative Corporation Act may be amended, re-
28 pealed or modified, but such amendment, repeal or modification
29 shall not affect any vested rights or take away or impair any

1 remedy for any liability which has been previously incurred,

2 Section 69. Repeal.

3 Sections 33-5-1 through 33-5-30, and 36-3-1 through 36-3-8,
4 ACLA 1949, are hereby repealed.

5 Section 70. Effective date.

6 This Act shall take effect immediately upon its passage and
7 approval or upon its becoming law without such approval.

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