

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 394 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to electric and telephone coopera-
7 tives; and providing for an effective date."

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

9 * Section 1. AS 10.05.376(c) is amended to read:

10 (c) The [EXCEPT AS PROVIDED IN AS 10.25.245, THE] provisions of
11 this chapter govern the procedures for and effect of the merger.

12 * Sec. 2. AS 10.25.010 is amended to read:

13 Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.
14 Except as provided in (b) of this section, an [AN] electric or tele-
15 phone cooperative may

16 (1) sue and be sued in its corporate name;

17 (2) have perpetual existence;

18 (3) adopt a corporate seal and alter it;

19 (4) construct, buy, lease, or otherwise acquire, and equip,
20 maintain, and operate, and sell, assign, convey, lease, mortgage,
21 pledge, or otherwise dispose of or encumber lands, buildings, struc-
22 tures, electric or telephone lines or systems, dams, plants and equip-
23 ment, and any other real or personal property, tangible or intangible,
24 which is necessary, convenient, or appropriate to accomplish the
25 purpose for which the cooperative is organized;

26 (5) buy, lease, or otherwise acquire, and use, and exercise
27 and sell, assign, convey, mortgage, pledge or otherwise dispose of or
28 encumber franchises, rights, privileges, licenses, and easements;

29 (6) borrow money and otherwise contract indebtedness, and

1 issue evidences of indebtedness, and secure the payment of the indebt-
2 edness by mortgage, pledge, or deed of trust of, or any other encum-
3 brance upon its real or personal property, assets, franchises, or
4 revenues;

5 (7) construct, maintain, and operate electric transmission
6 and distribution lines, or telephone lines along, upon, under and
7 across publicly owned lands and public thoroughfares, including,
8 without limitation, all roads, highways, streets, alleys, bridges, and
9 causeways;

10 (8) exercise the power of eminent domain;

11 (9) become a member of other cooperatives or corporations
12 or own stock in them;

13 (10) conduct its business and exercise its powers inside or
14 outside the state;

15 (11) adopt, amend, and repeal bylaws;

16 (12) make all contracts necessary, convenient, or appropri-
17 ate for the full exercise of its powers;

18 (13) make donations for the public welfare or for charita-
19 ble, scientific, or educational purposes;

20 (14) do and perform any other act and thing, and have and
21 exercise any other power which may be necessary, convenient, or appro-
22 priate to accomplish the purpose for which the cooperative is or-
23 ganized.

24 * Sec. 3. AS 10.25.010 is amended by adding a new subsection to read:

25 (b) An electric or telephone cooperative may not use cooperative
26 funds to promote or oppose the candidacy of a candidate for director
27 of the cooperative.

28 * Sec. 4. AS 10.25.020 is amended to read:

29 Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric

1 cooperative may

2 (1) generate, manufacture, purchase, acquire, accumulate,
3 and transmit electric energy, and distribute, sell, supply, and dis-
4 pose of electric energy to its members, to governmental agencies and
5 political subdivisions, and to other persons not exceeding 10 percent
6 of the number of its members; however, a cooperative that [WHICH]
7 acquires existing electric facilities may continue service to persons,
8 not in excess of 40 percent of the number of its members, who are
9 already receiving service from these facilities without requiring them
10 to become members, and these persons may become members upon the terms
11 as may be prescribed in the bylaws;

12 (2) assist persons to whom electric energy is or will be
13 supplied by the cooperative in wiring their premises and in acquiring
14 and installing electrical and plumbing appliances, equipment, fixtures
15 and apparatus by financing them, and in connection with these services
16 wire or have wired the premises, and buy, acquire, lease, sell, dis-
17 tribute, install, and repair electric and plumbing appliances, equip-
18 ment, fixtures, and apparatus;

19 (3) assist persons to whom electric energy is or will be
20 supplied by the cooperative in constructing, equipping, maintaining,
21 and operating electric cold storage or processing plants by financing
22 them or otherwise;

23 (4) operate a waste heat distribution system;

24 (5) operate a heating distribution system that was in
25 existence on the effective date of this Act.

26 * Sec. 5. AS 10.25.070 is amended to read:

27 Sec. 10.25.070. BYLAWS. The board of directors shall adopt the
28 first bylaws of a cooperative to be adopted following an incorpo-
29 ration, conversion, merger, or consolidation. Thereafter the district

1 delegates in cooperatives having three or more districts that are not
2 connected by a road system to another district of the cooperative may
3 adopt, amend, or repeal the bylaws by the affirmative vote of a major-
4 ity of the district delegates voting on the adoption, amendment, or
5 repeal at a meeting of the district delegates. In all other coopera-
6 tives the members shall adopt, amend, or repeal the bylaws by the
7 affirmative vote of a majority of the members voting on the question
8 [ADOPTION, AMENDMENT, OR REPEAL EITHER AT A MEETING OF THE MEMBERS OR
9 BY MAIL BALLOT WITHOUT A MEETING]. The bylaws shall set out the
10 rights and duties of members, district delegates, and directors and
11 may contain other provisions for the regulation and management of the
12 affairs of the cooperative consistent with this chapter or with the
13 articles of incorporation of the cooperative.

14 * Sec. 6. AS 10.25.080 is amended to read:

15 Sec. 10.25.080. MEMBERS. (a) Each incorporator of a coopera-
16 tive shall be a member of the cooperative or of another cooperative
17 that is a member of it. A person may not become a member unless that
18 person agrees to use electric energy, or telephone service, or other
19 services furnished by the cooperative when they are made available
20 through its facilities.

21 (b) Membership in a cooperative is not transferrable, except as
22 provided in the bylaws. The bylaws may

23 (1) prescribe additional qualifications and limitations on
24 membership;

25 (2) require membership as a condition of obtaining service
26 from the cooperative;

27 (3) provide for termination or suspension of membership;
28 however, a membership may not be terminated unless procedures for
29 termination are contained in the bylaws.

1 * Sec. 7. AS 10.25.100 is amended to read:

2 Sec. 10.25.100. NOTICE OF MEETINGS. Except as otherwise pro-
3 vided in this chapter, written notice stating the time and place of
4 each meeting of the members or district delegates [AND, IN THE CASE OF
5 A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS
6 CALLED,] shall be given to each member or district delegate, either
7 personally or by mail, not less than 20 days nor more than 40 days
8 before the date of the meeting. Notice of a special meeting of the
9 members, together with notice of the purpose for which the meeting is
10 called, shall be given to each member or district delegate, either
11 personally or by mail, not less than 90 days or more than 120 days
12 before the date of the meeting. If mailed, notice is considered given
13 when it is deposited in the United States mail with postage prepaid
14 addressed to the member or district delegate at the address of the
15 member or delegate as it appears on the records of the cooperative.

16 * Sec. 8. AS 10.25.120 is amended to read:

17 Sec. 10.25.120. VOTING. Each member is entitled to one vote on
18 each matter submitted to a vote of the membership [(1) AT A MEETING OF
19 THE MEMBERS OR (2) BY MAIL BALLOT PERMITTED BY AS 10.25.070]. Each
20 member of a district is entitled to one vote on each matter submitted
21 to a vote at a district meeting. A member may not vote by proxy but
22 may vote [VOTING AT A MEETING SHALL BE IN PERSON, BUT], if the bylaws
23 so provide, [MAY ALSO BE] by mail.

24 * Sec. 9. AS 10.25 is amended by adding a new section to read:

25 Sec. 10.25.125. RECORD DATE. To determine the members entitled
26 to notice of a meeting of the members or to vote on a matter that is
27 to be submitted to a vote of the members, or for any other proper
28 purpose, the board of directors may fix a date that occurs no more
29 than 90 days before the notice or vote as the record date for the

1 determination. If a record date is not fixed for the determination of
2 members entitled to notice of a meeting or to vote on a matter, the
3 date on which notice of the meeting or of mail voting is first mailed
4 is the record date. When a determination of members entitled to vote
5 at a meeting is made, the determination applies until the meeting is
6 adjourned sine die.

7 * Sec. 10. AS 10.25.140 is amended to read:

8 Sec. 10.25.140. BOARD OF DIRECTORS. The business of a co-
9 operative shall be managed by a board of not less than five directors,
10 each of whom shall be a member of the cooperative or of another co-
11 operative which is a member of it. The bylaws shall prescribe the
12 number of directors, their qualifications other than those prescribed
13 in this chapter, and the manner of holding meetings of the board of
14 directors and of electing successors to directors who resign, die, or
15 are otherwise incapable of acting. The bylaws shall [MAY] provide for
16 the removal of directors from office for cause and for the election of
17 their successors. Directors may not receive salaries for the services
18 as directors and, except in emergencies, shall not receive salaries
19 for their services in any other capacity without the approval of the
20 members. The bylaws may, however, prescribe a fixed fee for each day
21 of attendance at a meeting of the board of directors or other meeting
22 while officially representing the cooperative [EACH MEETING OF THE
23 BOARD OF DIRECTORS] and may provide for insurance and reimbursement of
24 actual expenses incurred while performing duties as a director [OF
25 ATTENDANCE].

26 * Sec. 11. AS 10.25 is amended by adding a new section to read:

27 Sec. 10.25.145. LIABILITY, INDEMNIFICATION, AND INSURANCE. (a)
28 A protected person is not individually liable for conduct performed
29 within the scope of the person's duties for the cooperative. However,

1 the protected person may be held individually liable for conduct if it
2 was not reasonable for the person to believe that the conduct was in,
3 or not contrary to, the best interests of the cooperative.

4 (b) Unless prohibited by the articles of incorporation or by-
5 laws, the cooperative shall indemnify a protected person who is or may
6 be made a party to a contested matter against expenses actually and
7 reasonably incurred in connection with the contested matter. However,
8 the cooperative may not indemnify the protected person if the person
9 did not reasonably believe the conduct to be in, or not opposed to,
10 the best interests of the cooperative. With respect to a criminal
11 action or proceeding, the cooperative shall indemnify a protected
12 person unless the person had reasonable cause to believe that the
13 conduct was unlawful.

14 (c) A cooperative may purchase and maintain insurance on behalf
15 of a protected person against liability asserted against the protected
16 person and incurred in an official capacity or arising out of the
17 person's status, whether or not the cooperative would have the power
18 to indemnify the person against the liability under this section.

19 (d) In this section

20 (1) "conduct" includes action, inaction, and omission;

21 (2) "contested matter" means a proposed, pending, or com-
22 pleted action or proceeding, whether civil, criminal, administrative,
23 or investigative;

24 (3) "expenses" include attorney fees, judgments, fines, and
25 amounts paid in settlement;

26 (4) "protected person" means a director, officer, employee,
27 or agent of a cooperative.

28 * Sec. 12. AS 10.25.150 is amended to read:

29 Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of

1 a cooperative named in articles of incorporation, consolidation,
2 merger, or conversion hold office until the next annual meeting of the
3 members and until their successors are elected and qualify. [AT EACH
4 ANNUAL MEETING, OR IN CASE OF FAILURE TO HOLD THE ANNUAL MEETING AS
5 SPECIFIED IN THE BYLAWS, AT A SPECIAL MEETING CALLED FOR THAT PURPOSE,
6 THE MEMBERS SHALL ELECT DIRECTORS TO HOLD OFFICE UNTIL THE NEXT ANNUAL
7 MEETING OF THE MEMBERS, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER.]
8 Each elected director holds office for the term for which elected and
9 until a successor is elected and qualifies.

10 * Sec. 13. AS 10.25.160 is amended to read:

11 Sec. 10.25.160. STAGGERED TERMS OF OFFICE FOR DIRECTORS. In-
12 stead of electing all directors annually, the bylaws may provide that
13 directors shall be elected for terms not to exceed three years, or
14 until their successors are elected and qualify, and that the terms of
15 directors shall be staggered so that one-third of the directors, or a
16 number as close to one-third as possible, shall be elected [AT] each
17 year [ANNUAL MEETING].

18 * Sec. 14. AS 10.25.175(a) is amended to read:

19 (a) A meeting of the board of directors may be attended by mem-
20 bers of the cooperative. Except when voice votes are authorized, a
21 vote shall be conducted in such a manner that the members may know the
22 vote of each person entitled to vote. The board of directors may
23 conduct a meeting by teleconference or similar communications equip-
24 ment if the board gives reasonable notice of the meeting and if mem-
25 bers of the cooperative are able to attend the meeting sites and hear
26 the meeting. This section applies only to a meeting at which a quorum
27 of the board participates.

28 * Sec. 15. AS 10.25.175(c) is amended to read:

29 (c) The following excepted subjects may be discussed in an

1 executive session:

2 (1) matters the immediate knowledge of which would clearly
3 have an adverse effect on the finances of the cooperative;

4 (2) subjects that tend to prejudice the reputation and
5 character of a person, including information concerning a member's
6 financial record; however, the person may request a public discussion;

7 (3) matters discussed with an attorney for the cooperative,
8 the immediate knowledge of which could have an adverse effect on the
9 legal position of the cooperative;

10 (4) the status of current labor negotiations and personnel
11 matters;

12 (5) matters specifically exempted from disclosure by law;

13 (6) sealed bids, trade secrets, or other confidential
14 commercial information;

15 (7) discussion of litigation by or against the cooperative.

16 * Sec. 16. AS 10.25.175(e) is repealed and reenacted to read:

17 (e) A member affected by action taken contrary to this section
18 may bring a suit in the superior court. The court may order appropri-
19 ate equitable relief after considering the circumstances of the case.
20 Action taken contrary to this section is not void if other equitable
21 relief is available and appropriate.

22 * Sec. 17. AS 10.25.235 is amended to read:

23 Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A
24 member of a cooperative may, at a reasonable time and for a proper
25 purpose, examine and make copies of the books and records of the
26 cooperative at the principal office of the cooperative. The coopera-
27 tive may charge a member an amount equal to the actual cost of du-
28 plicating documents requested under this section. The cooperative may
29 withhold books and records concerning specific matters that were

1 prepared for or during an executive session under AS 10.25.175(c) and
2 not subsequently made public by the cooperative. The cooperative may
3 also withhold the identity of public information that was referred to
4 during the executive session.

5 * Sec. 18. AS 10.25.240 is amended to read:

6 Sec. 10.25.240. MERGER. Except as provided in (b) of this
7 section, one [ONE] or more cooperatives, each [HEREINAFTER] designated
8 in this section as "merging cooperative," may merge into another
9 cooperative, [HEREINAFTER] designated in this section as "surviving
10 cooperative," by complying with the following requirements.

11 (1) The proposition for the merger of the merging coopera-
12 tives into the surviving cooperative and proposed articles of merger
13 shall be submitted to [A MEETING OF] the members of each merging
14 cooperative and of the surviving cooperative. The notice [OF THE
15 MEETING] shall have attached to it a copy of the proposed articles of
16 merger.

17 (2) If the proposed merger and the proposed articles of
18 merger, with any amendments, are approved by the affirmative vote of
19 not less than two-thirds of those members of each cooperative voting
20 on them [AT THE MEETING], articles of merger in the form approved
21 shall be executed and acknowledged on behalf of each cooperative by
22 its president or vice president and its seal shall be affixed by its
23 secretary.

24 * Sec. 19. AS 10.25.240 is amended by adding a new subsection to read:

25 (b) A merger of electric or telephone cooperatives may not take
26 effect unless the surviving cooperative expressly agrees to comply
27 with the terms of each collective bargaining agreement entered into
28 between a merging cooperative and a labor organization representing
29 employees of the cooperative that is in effect on the date of merger.

1 * Sec. 20. AS 10.25.260 is amended to read:

2 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives, [HERE-
3 INAFTER] designated in this section as "consolidating cooperative,"
4 may consolidate into a new cooperative, [HEREINAFTER] designated in
5 this section as the "new cooperative," by complying with the following
6 requirements:

7 (1) The proposition for the consolidation into the new
8 cooperative and proposed articles of consolidation shall be submitted
9 to [A MEETING OF] the members of each consolidating cooperative. The
10 notice [OF THE MEETING] shall have attached to it a copy of the pro-
11 posed articles of consolidation.

12 (2) If the proposed consolidation and the proposed articles
13 of consolidation, with any amendments, are approved by the affirmative
14 vote of not less than two-thirds of those members of each consolidat-
15 ing cooperative voting on them, articles of consolidation in the form
16 approved shall be executed and acknowledged on behalf of each consol-
17 idating cooperative by its president or vice president and its seal
18 shall be affixed and attested by its secretary.

19 * Sec. 21. AS 10.25.320 is amended to read:

20 Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS
21 COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business
22 may be dissolved in the following manner.

23 (1) The proposition to dissolve shall be submitted to the
24 members of the cooperative [AT AN ANNUAL OR SPECIAL MEETING]. The
25 notice shall state [SET FORTH] the proposition.

26 (2) For a cooperative with fewer than 10,000 subscribers,
27 the proposition is approved by the affirmative vote of two-thirds of
28 all the members of the cooperative. For a cooperative with at least
29 10,000 subscribers, the proposition is approved [AT THE MEETING THE

1 MEMBERS SHALL APPROVE,] by the affirmative vote of not less than a
2 majority of all members of the cooperative [, THE PROPOSITION TO
3 DISSOLVE THE COOPERATIVE].

4 (3) Upon approval, a certificate of election to dissolve,
5 hereafter designated the "certificate," executed and acknowledged on
6 behalf of the cooperative by its president or vice president under its
7 seal, attested by its secretary, shall be submitted to the commission-
8 er for filing together with an affidavit by the officer executing the
9 certificate stating that the statements in the certificate are true.
10 The certificate shall state the name of the cooperative, the address
11 of its principal office, and that the members of the cooperative have
12 voted to dissolve the cooperative.

13 * Sec. 22. AS 10.25.400 is amended to read:

14 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROP-
15 ERTY. A cooperative may not otherwise sell, lease, or dispose of more
16 than 15 percent of the cooperative's total assets, less depreciation,
17 as reflected on the books of the cooperative at the time of the trans-
18 action [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the
19 transaction is authorized under this section. For a cooperative with
20 fewer than 10,000 subscribers, the transaction is approved by the
21 affirmative vote of not less than two-thirds of all the members of the
22 cooperative. For a cooperative with at least 10,000 subscribers, the
23 transaction is approved by the affirmative vote of not less than a
24 majority of all the members of the cooperative. However, notwith-
25 standing a provision of this chapter or any other provision of law,
26 the board of directors may, upon the authorization of a majority of
27 those members of the cooperative voting on the issue in an election in
28 which at least 10 percent of the eligible members return ballots
29 [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or otherwise

1 dispose of all or a substantial portion of its property to another
2 cooperative or to the state if the sale complies with (d) of this
3 section [HOLDER OF ITS PROPERTY TO ANOTHER COOPERATIVE OR TO THE
4 HOLDER OF AN EVIDENCE OF INDEBTEDNESS ISSUED TO THE UNITED STATES OF
5 AMERICA OR AN AGENCY OR INSTRUMENTALITY OF IT].

6 * Sec. 23. AS 10.25.400 is amended by adding new subsections to read:

7 (b) Before a vote to authorize the disposition or sale of more
8 than 15 percent of the total assets of the cooperative, other than a
9 vote to authorize disposition or sale to the state or another coopera-
10 tive, the board of directors shall

11 (1) have the real and personal property that is proposed
12 for sale appraised by three appraisers; the appraisers shall be chosen
13 by the board and may not be associated with the cooperative or a
14 proposed buyer of cooperative property; the first proposed buyer shall
15 advance to the cooperative money sufficient to pay for the appraisals;

16 (2) notify all cooperative members, at least 90 days in
17 advance, of a vote on disposition of cooperative property; the notice
18 must contain detailed proposals for disposition of the property;

19 (3) at least 90 days before the vote, notify all other
20 cooperatives situated and operating in the state that the property is
21 available for disposition and include with the notice one copy of each
22 appraisal of the property;

23 (4) at least 30 days before the vote, mail to all members
24 any alternate proposals made by another cooperative, or by cooperative
25 members if an alternate proposal signed by at least 50 members has
26 been submitted to the board, together with any recommendation that the
27 board has made; and

28 (5) place each proposal for which notice has been given on
29 the ballot.

1 (c) This section does not apply to the transfer of cooperative
2 property under AS 10.25.240 - 10.25.300.

3 (d) The sale of a cooperative may not take effect unless the
4 purchaser expressly agrees to comply with the terms of each collective
5 bargaining agreement entered into between the cooperative being sold
6 and a labor organization representing employees of the cooperative
7 that is in effect on the date of sale.

8 * Sec. 24. The amendments to AS 10.25.400 made by sec. 23 of this Act
9 do not apply to a sale of cooperative property that was approved by the
10 members before the effective date of this Act.

11 * Sec. 25. AS 10.25.245 is repealed.

12 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).