

Original sponsor: Labor and Commerce  
Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 394 (Judiciary)  
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 15 [20] days or [NOR] more than  
8     60 [40] days before the date of the meeting. Notice of a special  
9     meeting of the members, together with notice of the purpose for which  
10    the meeting is called, shall be given to each member or district  
11    delegate, either personally or by mail, not less than 90 days or more  
12    than 120 days before the date of the meeting. If mailed, notice is  
13    considered given when it is deposited in the United States mail with  
14    postage prepaid addressed to the member or district delegate at the  
15    address of the member or delegate as it appears on the records of the  
16    cooperative.

17    \* Sec. 8. AS 10.25.120 is amended to read:

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

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

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

1 than 30 days before the date of notice or distribution of mail ballots  
2 as the record date for the determination. If a record date is not  
3 fixed for the determination of members entitled to notice of a meeting  
4 or to vote on a matter, the date on which notice of the meeting or of  
5 mail voting is first mailed is the record date. When a determination  
6 of members entitled to vote at a meeting is made, the determination  
7 applies until the meeting is adjourned sine die.

8 \* Sec. 10. AS 10.25.140 is amended to read:

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

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

1           Sec. 10.25.145. LIABILITY, INDEMNIFICATION, AND INSURANCE. (a)

2           A protected person is not individually liable for conduct performed  
3           within the scope of the person's duties for the cooperative. However,  
4           the protected person may be held individually liable for conduct if it  
5           was not reasonable for the person to believe that the conduct was in,  
6           or not contrary to, the best interests of the cooperative.

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

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

22          (d) In this section

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

24                 (2) "contested matter" means a proposed, pending, or com-  
25                 pleted action or proceeding, whether civil, criminal, administrative,  
26                 or investigative;

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

29                 (4) "protected person" means a director, officer, employee,

1 or agent of a cooperative.

2 \* Sec. 12. AS 10.25.150 is amended to read:

3 Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of  
4 a cooperative named in articles of incorporation, consolidation,  
5 merger, or conversion hold office until the next annual meeting of the  
6 members and until their successors are elected and qualify. [AT EACH  
7 ANNUAL MEETING, OR IN CASE OF FAILURE TO HOLD THE ANNUAL MEETING AS  
8 SPECIFIED IN THE BYLAWS, AT A SPECIAL MEETING CALLED FOR THAT PURPOSE,  
9 THE MEMBERS SHALL ELECT DIRECTORS TO HOLD OFFICE UNTIL THE NEXT ANNUAL  
10 MEETING OF THE MEMBERS, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER.]  
11 Each elected director holds office for the term for which elected and  
12 until a successor is elected and qualifies.

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

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

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

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

1 of the board participates.

2 \* Sec. 15. AS 10.25.175(e) is repealed and reenacted to read:

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

8 \* Sec. 16. AS 10.25.235 is amended to read:

9 Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A  
10 member of a cooperative may, at a reasonable time and for a proper  
11 purpose, examine and make copies of the books and records of the  
12 cooperative at the principal office of the cooperative. The coopera-  
13 tive may charge a member an amount equal to the actual cost of du-  
14 plicating documents requested under this section. The cooperative may  
15 withhold books and records concerning specific matters that were  
16 prepared for or during an executive session under AS 10.25.175(c) and  
17 not subsequently made public by the cooperative. The cooperative may  
18 also withhold the identity of public information that was referred to  
19 during the executive session.

20 \* Sec. 17. AS 10.25.240 is amended to read:

21 Sec. 10.25.240. MERGER. Except as provided in (b) of this  
22 section, one [ONE] or more cooperatives, each [HEREINAFTER] designated  
23 in this section as "merging cooperative," may merge into another  
24 cooperative, [HEREINAFTER] designated in this section as "surviving  
25 cooperative," by complying with the following requirements.

26 (1) The proposition for the merger of the merging coopera-  
27 tives into the surviving cooperative and proposed articles of merger  
28 shall be submitted to [A MEETING OF] the members of each merging  
29 cooperative and of the surviving cooperative. The notice [OF THE

1 MEETING] shall have attached to it a copy of the proposed articles of  
2 merger.

3 (2) If the proposed merger and the proposed articles of  
4 merger, with any amendments, are approved by the affirmative vote of  
5 not less than two-thirds of those members of each cooperative voting  
6 on them [AT THE MEETING], articles of merger in the form approved  
7 shall be executed and acknowledged on behalf of each cooperative by  
8 its president or vice president and its seal shall be affixed by its  
9 secretary.

10 \* Sec. 18. AS 10.25.240 is amended by adding a new subsection to read:

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

16 \* Sec. 19. AS 10.25.260 is amended to read:

17 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives, [HERE-  
18 INAFTER] designated in this section as "consolidating cooperative,"  
19 may consolidate into a new cooperative, [HEREINAFTER] designated in  
20 this section as the "new cooperative," by complying with the following  
21 requirements:

22 (1) The proposition for the consolidation into the new  
23 cooperative and proposed articles of consolidation shall be submitted  
24 to [A MEETING OF] the members of each consolidating cooperative. The  
25 notice [OF THE MEETING] shall have attached to it a copy of the pro-  
26 posed articles of consolidation.

27 (2) If the proposed consolidation and the proposed articles  
28 of consolidation, with any amendments, are approved by the affirmative  
29 vote of not less than two-thirds of those members of each

1 consolidating cooperative voting on them, articles of consolidation in  
2 the form approved shall be executed and acknowledged on behalf of each  
3 consolidating cooperative by its president or vice president and its  
4 seal shall be affixed and attested by its secretary.

5 \* Sec. 20. AS 10.25.320 is amended to read:

6 Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS  
7 COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business  
8 may be dissolved in the following manner: [.]

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

12 (2) The proposition is approved by the affirmative vote of  
13 at least two-thirds of the members voting on the proposition if the  
14 number of members voting to approve it constitutes [AT THE MEETING THE  
15 MEMBERS SHALL APPROVE, BY THE AFFIRMATIVE VOTE OF NOT LESS THAN] a  
16 majority of all members of the cooperative [, THE PROPOSITION TO  
17 DISSOLVE THE COOPERATIVE].

18 (3) Upon approval, a certificate of election to dissolve,  
19 hereafter designated the "certificate," executed and acknowledged on  
20 behalf of the cooperative by its president or vice president under its  
21 seal, attested by its secretary, shall be submitted to the commission-  
22 er for filing together with an affidavit by the officer executing the  
23 certificate stating that the statements in the certificate are true.  
24 The certificate shall state the name of the cooperative, the address  
25 of its principal office, and that the members of the cooperative have  
26 voted to dissolve the cooperative.

27 \* Sec. 21. AS 10.25.400 is amended to read:

28 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROP-  
29 ERTY. A cooperative may not otherwise sell, lease, or dispose of more

1 than 15 percent of the cooperative's total assets, less depreciation,  
2 as reflected on the books of the cooperative at the time of the trans-  
3 action [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the  
4 transaction is authorized under this section. The transaction is  
5 approved by the affirmative vote of not less than two-thirds of the  
6 members voting on the transaction if the number of members voting to  
7 approve it constitutes [BY THE AFFIRMATIVE VOTE OF NOT LESS THAN] a  
8 majority of all the members of the cooperative. However, notwith-  
9 standing a provision of this chapter or any other provision of law,  
10 the board of directors may, upon the authorization of a majority of  
11 those members of the cooperative voting on the issue in an election in  
12 which at least 10 percent of the eligible members return ballots  
13 [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or otherwise  
14 dispose of all or a substantial portion of its property to another  
15 cooperative or to the state if the sale complies with (d) of this  
16 section [HOLDER OF ITS PROPERTY TO ANOTHER COOPERATIVE OR TO THE  
17 HOLDER OF AN EVIDENCE OF INDEBTEDNESS ISSUED TO THE UNITED STATES OF  
18 AMERICA OR AN AGENCY OR INSTRUMENTALITY OF IT].

19 \* Sec. 22. AS 10.25.400 is amended by adding new subsections to read:

20 (b) Before a vote to authorize the disposition or sale of more  
21 than 15 percent of the total assets of the cooperative, other than a  
22 vote to authorize disposition or sale to the state or another coopera-  
23 tive, the board of directors shall

24 (1) have the tangible and intangible property that is  
25 proposed for sale appraised by three appraisers; the appraisers shall  
26 be chosen by the board and may not be associated with the cooperative  
27 or a proposed buyer of cooperative property; the first proposed buyer  
28 shall advance to the cooperative money sufficient to pay for the  
29 appraisals;

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

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

8           (4) at least 30 days before the vote, mail to all members  
9 any alternate proposals made by another cooperative, or by cooperative  
10 members if an alternate proposal signed by at least 50 members has  
11 been submitted to the board, together with any recommendation that the  
12 board has made; and

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

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

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

22 \* Sec. 23. The amendments to AS 10.25.400 made by sec. 22 of this Act  
23 do not apply to a sale of cooperative property that was approved by the  
24 members before the effective date of this Act.

25 \* Sec. 24. AS 10.25.245 is repealed.

26 \* Sec. 25. This Act takes effect immediately under AS 01.10.070(c).