

Original sponsor: Labor and Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR 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

Original sponsor: Labor and Commerce
Committee

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR 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 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 two appraisers; one appraiser shall be
26 chosen by the board and one shall be chosen by the proposed buyer; the
27 appraisers may not be associated with the cooperative or a proposed
28 buyer of cooperative property; each appraiser shall deliver a copy of
29 the appraisal to the cooperative and to the proposed buyer; the first

1 proposed buyer shall advance to the cooperative money sufficient to
2 pay for the appraisals; if a buyer other than the first proposed buyer
3 purchases the assets based on the appraisals, the actual buyer shall
4 reimburse the first proposed buyer for the cost of the appraisals;

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

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

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

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

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

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

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

29 * Sec. 24. AS 10.25.245 is repealed.

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