

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2

SENATE BILL NO. 369

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 10.25.010 is amended to read:

10 Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.

11 An electric or telephone cooperative may

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

13 (2) have perpetual existence;

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

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

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

25 (6) borrow money and otherwise contract indebtedness, and
26 issue evidences of indebtedness, and secure the payment of the indebt-
27 edness by mortgage, pledge, or deed of trust of, or any other encum-
28 brance upon its real or personal property, assets, franchises, or
29 revenues;

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

6 (8) exercise the power of eminent domain;

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

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

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

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

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

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

20 * Sec. 2. AS 10.25.020 is amended to read:

21 Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric
22 cooperative may

23 (1) generate, manufacture, purchase, acquire, accumulate,
24 and transmit electric energy, and distribute, sell, supply, and dis-
25 pose of electric energy to its members, to governmental agencies and
26 political subdivisions, and to other persons not exceeding 10 percent
27 of the number of its members; however, a cooperative that [WHICH]
28 acquires existing electric facilities may continue service to persons,
29 not in excess of 40 percent of the number of its members, who are

1 already receiving service from these facilities without requiring them
2 to become members, and these persons may become members upon the terms
3 as may be prescribed in the bylaws;

4 (2) assist persons to whom electric energy is or will be
5 supplied by the cooperative in wiring their premises and in acquiring
6 and installing electrical and plumbing appliances, equipment, fixtures
7 and apparatus by financing them, and in connection with these services
8 wire or have wired the premises, and buy, acquire, lease, sell, dis-
9 tribute, install, and repair electric and plumbing appliances, equip-
10 ment, fixtures, and apparatus;

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

15 (4) operate a waste heat distribution system;

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

18 * Sec. 3. AS 10.25.070 is amended to read:

19 Sec. 10.25.070. BYLAWS. The board of directors shall adopt the
20 first bylaws of a cooperative to be adopted following an incorpo-
21 ration, conversion, merger, or consolidation. Thereafter the district
22 delegates in cooperatives having three or more districts that are not
23 connected by a road system to another district of the cooperative may
24 adopt, amend, or repeal the bylaws by the affirmative vote of a major-
25 ity of the district delegates voting on the adoption, amendment, or
26 repeal at a meeting of the district delegates. In all other coopera-
27 tives the members shall adopt, amend, or repeal the bylaws by the
28 affirmative vote of a majority of the members voting on the question
29 [ADOPTION, AMENDMENT, OR REPEAL EITHER AT A MEETING OF THE MEMBERS OR

1 BY MAIL BALLOT WITHOUT A MEETING]. The bylaws shall set out the
2 rights and duties of members, district delegates, and directors and
3 may contain other provisions for the regulation and management of the
4 affairs of the cooperative consistent with this chapter or with the
5 articles of incorporation of the cooperative.

6 * Sec. 4. AS 10.25.080 is amended to read:

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

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

15 (1) prescribe additional qualifications and limitations on
16 membership;

17 (2) require membership as a condition of obtaining service
18 from the cooperative;

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

22 * Sec. 5. AS 10.25.100 is amended to read:

23 Sec. 10.25.100. NOTICE OF MEETINGS. Except as otherwise pro-
24 vided in this chapter, written notice stating the time and place of
25 each meeting of the members or district delegates [AND, IN THE CASE OF
26 A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS
27 CALLED,] shall be given to each member or district delegate, either
28 personally or by mail, not less than 20 days nor more than 40 days
29 before the date of the meeting. Notice of a special meeting of the

1 members, together with notice of the purpose for which the meeting is
2 called, shall be given to each member or district delegate, either
3 personally or by mail, not less than 90 days or more than 120 days
4 before the date of the meeting. If mailed, notice is considered given
5 when it is deposited in the United States mail with postage prepaid
6 addressed to the member or district delegate at the address of the
7 member or delegate as it appears on the records of the cooperative.

8 * Sec. 6. AS 10.25.120 is amended to read:

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

16 * Sec. 7. AS 10.25 is amended by adding a new section to read:

17 Sec. 10.25.125. RECORD DATE. To determine the members entitled
18 to notice of a meeting of the members or to vote on a matter that is
19 to be submitted to a vote of the members, or for any other proper
20 purpose, the board of directors may fix in advance a date as the
21 record date for the determination. If a record date is not fixed for
22 the determination of members entitled to notice of a meeting or to
23 vote on a matter, the date on which notice of the meeting or of mail
24 voting is first mailed is the record date. When a determination of
25 members entitled to vote at a meeting is made, the determination
26 applies until the meeting is adjourned sine die.

27 * Sec. 8. AS 10.25.140 is amended to read:

28 Sec. 10.25.140. BOARD OF DIRECTORS. The business of a co-
29 operative shall be managed by a board of not less than five directors,

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

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

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

19 A protected person is not individually liable for conduct performed
20 within the scope of the person's duties for the cooperative. However,
21 the protected person may be held individually liable for conduct if it
22 was not reasonable for the person to believe that the conduct was in,
23 or not contrary to, the best interests of the cooperative.

24 (b) Unless prohibited by the articles of incorporation or by-
25 laws, the cooperative shall indemnify a protected person who is or may
26 be made a party to a contested matter against expenses actually and
27 reasonably incurred in connection with the contested matter. However,
28 the cooperative may not indemnify the protected person if the person
29 did not reasonably believe the conduct to be in, or not opposed to,

1 the best interests of the cooperative. With respect to a criminal
2 action or proceeding, the cooperative shall indemnify a protected
3 person unless the person had reasonable cause to believe that the
4 conduct was unlawful.

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

10 (d) In this section

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

12 (2) "contested matter" means a proposed, pending, or com-
13 pleted action or proceeding, whether civil, criminal, administrative,
14 or investigative;

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

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

19 * Sec. 10. AS 10.25.150 is amended to read:

20 Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of
21 a cooperative named in articles of incorporation, consolidation,
22 merger, or conversion hold office until the next annual meeting of the
23 members and until their successors are elected and qualify. [AT EACH
24 ANNUAL MEETING, OR IN CASE OF FAILURE TO HOLD THE ANNUAL MEETING AS
25 SPECIFIED IN THE BYLAWS, AT A SPECIAL MEETING CALLED FOR THAT PURPOSE,
26 THE MEMBERS SHALL ELECT DIRECTORS TO HOLD OFFICE UNTIL THE NEXT ANNUAL
27 MEETING OF THE MEMBERS, EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER.]
28 Each elected director holds office for the term for which elected and
29 until a successor is elected and qualifies.

1 * Sec. 11. AS 10.25.160 is amended to read:

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

9 * Sec. 12. AS 10.25.175(a) is amended to read:

10 (a) A meeting of the board of directors may be attended by mem-
11 bers of the cooperative. Except when voice votes are authorized, a
12 vote shall be conducted in such a manner that the members may know the
13 vote of each person entitled to vote. The board of directors may
14 conduct a meeting by teleconference or similar communications equip-
15 ment. This section applies only to a meeting at which a quorum of the
16 board participates.

17 * Sec. 13. AS 10.25.175(c) is amended to read:

18 (c) The following excepted subjects may be discussed in an
19 executive session:

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

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

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

28 (4) labor negotiations and personnel matters;

29 (5) matters specifically exempted from disclosure by law.

1 the articles of incorporation, or the bylaws;

2 (6) bids, trade secrets, or other confidential commercial
3 information;

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

5 * Sec. 14. AS 10.25.175(e) is repealed and reenacted to read:

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

11 * Sec. 15. AS 10.25.235 is amended to read:

12 Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A
13 member of a cooperative may, at a reasonable time and for a proper
14 purpose, examine and make copies of the books and records of the
15 cooperative at the principal office of the cooperative. The coopera-
16 tive may charge a member an amount equal to the actual cost of du-
17 plicating documents requested under this section. The cooperative may
18 withhold books and records concerning subjects that may be discussed
19 in executive session under AS 10.25.175(c).

20 * Sec. 16. AS 10.25.240 is amended to read:

21 Sec. 10.25.240. MERGER. One or more cooperatives, each [HERE-
22 INAFTER] designated in this section as "merging cooperative," may
23 merge into another cooperative, [HEREINAFTER] designated in this
24 section as "surviving cooperative," by complying with the following
25 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. 17. AS 10.25.260 is amended to read:

11 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives,
12 [HEREINAFTER] designated in this section as "consolidating coopera-
13 tive," may consolidate into a new cooperative, [HEREINAFTER] designat-
14 ed in this section as the "new cooperative," by complying with the
15 following requirements:

16 (1) The proposition for the consolidation into the new
17 cooperative and proposed articles of consolidation shall be submitted
18 to [A MEETING OF] the members of each consolidating cooperative. The
19 notice [OF THE MEETING] shall have attached to it a copy of the pro-
20 posed articles of consolidation.

21 (2) If the proposed consolidation and the proposed articles
22 of consolidation, with any amendments, are approved by the affirmative
23 vote of not less than two-thirds of those members of each consolida-
24 ting cooperative voting on them, articles of consolidation in the form
25 approved shall be executed and acknowledged on behalf of each consol-
26 idating cooperative by its president or vice president and its seal
27 shall be affixed and attested by its secretary.

28 * Sec. 18. AS 10.25.320 is amended to read:

29 Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS

1 COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business
2 may be dissolved in the following manner.

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

6 (2) The [AT THE MEETING THE MEMBERS SHALL APPROVE, BY THE]
7 affirmative vote of not less than two-thirds [A MAJORITY] of all
8 members of the cooperative is required to approve [,] the proposition
9 to dissolve the cooperative.

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

19 * Sec. 19. AS 10.25.400 is amended to read:

20 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROP-
21 ERTY. A cooperative may not otherwise sell, lease, or dispose of more
22 than 15 percent of the cooperative's total assets, less depreciation,
23 as reflected on the books of the cooperative at the time of the trans-
24 action [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the
25 transaction is authorized by the affirmative vote of not less than
26 two-thirds [A MAJORITY] of all the members of the cooperative. How-
27 ever, notwithstanding a provision of this chapter or any other pro-
28 vision of law, the board of directors may, upon the authorization of a
29 majority of those members of the cooperative voting on the issue in an

1 election in which at least 10 percent of the eligible members return
2 ballots [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or other-
3 wise dispose of all or a substantial portion of its property to another
4 cooperative or to the state [OR TO THE HOLDER OF ITS PROPERTY TO
5 ANOTHER COOPERATIVE OR TO THE HOLDER OF AN EVIDENCE OF INDEBTEDNESS
6 ISSUED TO THE UNITED STATES OF AMERICA OR AN AGENCY OR INSTRUMENTALITY
7 OF IT].

8 * Sec. 20. AS 10.25.400 is amended by adding new subsections to read:

9 (b) Before a vote on authorization for the disposition or sale
10 of more than 15 percent of the total assets of the cooperative, the
11 board of directors shall

12 (1) have the property appraised by three appraisers chosen
13 by the board and not associated with the cooperative or a proposed
14 buyer of cooperative property; the first proposed buyer shall advance
15 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 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).