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394

STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
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May, 1988

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Mary Van Nimwegen

*House Judiciary:*

4-28-88



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.

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

1 cooperative may

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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:

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

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

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

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

(d) In this section

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

(2) "contested matter" means a proposed, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative;

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

(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).  
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5-1695L  
Cramer  
4/27/88

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Original sponsor: Labor and Commerce  
Committee

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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;

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1 issue evidences of indebtedness, and secure the payment of the indebt-  
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3 brance upon its real or personal property, assets, franchises, or  
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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,  
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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-  
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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;

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13 supplied by the cooperative in wiring their premises and in acquiring  
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20 supplied by the cooperative in constructing, equipping, maintaining,  
21 and operating electric cold storage or processing plants by financing  
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24 (5) operate a heating distribution system that was in  
25 existence on the effective date of this Act.

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3 adopt, amend, or repeal the bylaws by the affirmative vote of a major-  
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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(c) is amended to read:

3 *out*  
4 (c) The following excepted subjects may be discussed in an  
5 executive session:

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

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

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

14 (4) the status of current labor negotiations and personnel  
15 matters;

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

17 (6) sealed bids, trade secrets, or other confidential  
18 commercial information;

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

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

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

26 \* Sec. 17. AS 10.25.235 is amended to read:

27 Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A  
28 member of a cooperative may, at a reasonable time and for a proper  
29 purpose, examine and make copies of the books and records of the  
30 cooperative at the principal office of the cooperative. The

1 cooperative may charge a member an amount equal to the actual cost of  
2 duplicating documents requested under this section. The cooperative  
3 may withhold books and records concerning specific matters that were  
4 prepared for or during an executive session under AS 10.25.175(c) and  
5 not subsequently made public by the cooperative. The cooperative may  
6 also withhold the identity of public information that was referred to  
7 during the executive session.

8 \* Sec. 18. AS 10.25.240 is amended to read:

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

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

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

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

28 (b) A merger of electric or telephone cooperatives may not take  
29 effect unless the surviving cooperative expressly agrees to comply

1 with the terms of each collective bargaining agreement entered into  
2 between a merging cooperative and a labor organization representing  
3 employees of the cooperative that is in effect on the date of merger.

4 \* Sec. 20. AS 10.25.260 is amended to read:

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

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

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

22 \* Sec. 21. AS 10.25.320 is amended to read:

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

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

29 (2) The proposition is approved by the affirmative vote of

1 at least two-thirds of the members voting on the proposition if the  
2 number of members voting to approve it constitutes [AT THE MEETING THE  
3 MEMBERS SHALL APPROVE, BY THE AFFIRMATIVE VOTE OF NOT LESS THAN] a  
4 majority of all members of the cooperative [, THE PROPOSITION TO  
5 DISSOLVE THE COOPERATIVE].

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

15 \* Sec. 22. AS 10.25.400 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 60  
-5- deletion of  
mail ballots

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

*Green & ...*

*open meeting*

- 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

*not just votes*

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).

*Heopks*

PROPOSED AMENDMENT TO  
CS for HB 394 (L&C)

Submitted by: David Hutchens, ARECA  
April 20, 1988

- p.5, line 7: change "20" to "15" and change "40" to "60"
- p.5, line 29: change "90" to "30" and before the word "notice" insert "date of" and after the words "notice of" delete the word "vote" and replace it with "distribution of mail ballots"
- p.6, line 22: after the word "cooperative" add "and for each day of necessary travel to and from meetings while officially representing the cooperative"
- p. 13, line 11: change the phrase "real and personal" to read "tangible and intangible"

A M E N D M E N T

TO: HB 394

Page 2, line 15, after ";":

Insert: "a cooperative may not make a donation under this paragraph to pay lobbying or advertising expenses;"

LETTER OF INTENT  
on  
HB 394

By providing in AS 10.25.120 that members of cooperatives may vote by mail, while not changing the quorum requirements contained in AS 10.25.110, it is the intent of the legislature that votes conducted by mail are valid if a quorum participates in the vote whether or not a quorum is present in person at the meeting of the members.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: An Act relating to electric and telephone cooperatives BRU: Banking, Securities & Corporations  
 Sponsor: Labor and Commerce Committee Components: \_\_\_\_\_  
 Requester: House Labor and Commerce Committee

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

**FUNDING: (Thousands of dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary.)**

The provisions in this bill are internal to the cooperatives and do not affect the department.

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: \_\_\_\_\_  
 Approved by Commissioner: J. Anthony Smith Commissioner Date: 4/5/88  
 Agency: Department of Commerce & Economic Development

**Distribution (by preparer):**

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

# HOUSE COMMITTEE REPORT

(7)

Date referred: 1/25/88

FURTHER REFERRALS: Judiciary

DATE: 3/31/88

The Labor & Commerce Committee has considered HB 394

"An Act relating to electric and telephone cooperatives; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB 394 (LTC)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(s):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

*W. L. ...*  
*...*  
*Cliff Dawkins*  
*...*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

*David Dawley (NO REC)*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*David Dawley*  
 Chairman's signature

LAW OFFICES OF  
**KEMPEL, HUFFMAN AND GINDER**  
A PROFESSIONAL CORPORATION

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February 10, 1988

Kenneth Johnson  
Information Director  
Alaska Rural Electric Cooperative  
Association, Inc.  
175 South Franklin Street, Room 324  
Juneau, Alaska 99801

Re: House Bill 394 (Amendments To AS 10.25)

Dear Ken:

You have asked for some additional explanation of and examples of the need for the proposed language found at page 2, line 14, of HB 394. That change adds a new subsection (13) to AS 10.25.010, which authorizes cooperatives to:

(13) make donations for the public welfare or for charitable, scientific or educational purposes;

As you know, this language is not original to the electric and telephone cooperatives but, rather, was copied from an identical provision found in the Alaska Cooperative Corporations Act and codified as AS 10.15.010(12). This existing statutory section applies to all nonprofit cooperatives in the state of Alaska except electric and telephone cooperatives. Electric and telephone cooperatives need a similar statutory provision.

The cooperatives are routinely called upon to make various contributions, including services, materials and money, to community-wide activities. Examples of these types of contributions range from using cooperative line trucks to install community Christmas decorations on poles to contributions of used poles or money to the Boy Scouts to contributions to the local sled dog race. One major, recurring request for contributions from the electric cooperatives involves the waiver of certain installation or hook-up fees for temporary power to the various community outdoor festivals, such as the Cordova Ice Worm Festival or the Kodiak Crab Festival. It is my understanding

Kenneth Johnson  
February 10, 1988  
Page 2

that some thought has been given to attempting to limit the language of this proposed amendment to "in-kind service" to "nonprofit organizations." I can initially see two problems with this type of proposed restriction. First, even this type of contribution by the cooperative properly involves the waiver of fees and not the contribution of services, since it is still important to account for those services (for instance, the line-man's time) correctly and to attach a monetary value to those services for proper accounting purposes. In other words, in-kind services are not non-monetary services, and the world of utility accounting makes little distinction between the two. Secondly, carrying on with the example of community festivals, a restriction of contributions to only nonprofit groups would, for instance, preclude participation in festivals organized by the various municipalities or native corporations which are not strictly nonprofit organizations.

Donations for scientific purposes are necessary because Alaska electric cooperatives are not individually large enough to conduct their own scientific research and development activities. For this reason, groups such as the Electric Power Research Institute (EPRI) have been formed to conduct research in areas ranging from environmental concerns to new approaches for meeting and managing customer demand for energy services. EPRI publishes research papers such as "Monitoring Stress In The Turbine Generator," "PCB Detection In The Field," "Vault Protection For High Current Distribution," and "Reliability Measures For System Planning." It is vital that Alaska's electric cooperatives be authorized to participate in this scientific research and encouraged to be aware of and incorporate the results of such research.

Examples of cooperative donations for educational purposes also include two somewhat diverse activities. First, Alaska's electric cooperatives have increasingly become active in educational programs in the schools in the cooperatives' communities. These programs stress a knowledge of electricity, how it behaves, and the safety considerations involved with its use. Several of the cooperatives hold contests among the local school children and give prizes associated with those contests. Secondly, the electric cooperatives, especially in some of the smaller rural communities, have long felt the need to encourage and develop local skills necessary for the efficient operation of the cooperatives in that village. Alaska Village Electric Cooperative ("AVEC"), for instance, may wish to develop a program

Kenneth Johnson  
February 10, 1988  
Page 3

of grants or scholarships to local village residents to allow them to attend trade schools to learn Diesel mechanic or welding skills which will benefit AVEC in its village operations. Kodiak Electric Association ("KEA") was very successful several years ago in creating a scholarship which enabled a local summer employee of the cooperative to attend engineering school at UAF. That scholarship recipient returned to eventually become chief engineer at KEA.

I could, of course, give several more examples of contributions currently being made by the electric cooperatives in their communities, but I believe the above gives you a flavor of the activities covered under this section and why the electric cooperatives feel this amendment is important and required.

If anyone has any further questions or wishes to discuss the subject with me in greater detail, please feel free to have them give me a call.

Sincerely,

KEMPEL, HUFFMAN AND GINDER, P.C.



Roger R. Kempel  
General Counsel for ARECA

RRK:lka

cc: David Hutchens  
General Manager, ARECA

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1988

SUBJECT: Sectional analysis of HB 394  
(Electric and telephone cooperative)

TO: Representative Dave Donley  
Chairman  
House Labor and Commerce Committee

FROM: Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill, and the bill itself is the best statement of its contents.

Section 1 increases the powers of an electric or telephone cooperative to include making certain kinds of donations.

Section 2 increases the powers of an electric cooperative to include operating a waste heat distribution system and an existing heat distribution system whether or not it uses waste heat.

Section 3 removes the requirement that amendments to a cooperative's bylaws be made at a meeting.

Section 4 permits the bylaws to require that a person obtaining service from a cooperative become a member of the cooperative, and permits the bylaws to provide procedures for terminating or suspending a membership.

Section 5 requires that notice of special meetings be given between 90 and 120 days before the meeting, together with a notice of the meeting purpose.

Representative Dave Donley  
Page 2  
February 2, 1988

Section 6 prohibits members from voting by proxy when a matter is submitted to a vote of the membership. The section continues to permit voting by mail.

Section 7 permits the board of directors of a cooperative to fix a record date in advance of submitting a matter to a vote of the members to determine the members who are entitled to vote.

Section 8 limits removal of directors to removal for cause, permits the bylaws to allow paying directors a fee for attending meetings on behalf of the cooperative, and permits the cooperative to provide insurance for the directors.

Section 9 addresses liability, indemnification and insurance for "protected persons," defined as directors, officers, employees, and agents of the cooperative. Subsection (a) limits individual liability. Subsection (b) requires, with certain exceptions, a cooperative to indemnify a protected person unless prohibited by the cooperative's articles or bylaws. Subsection (c) permits a cooperative to insure against liability asserted against a protected person. Subsection (d) contains definitions.

Sections 10 and 11 require election of directors each year instead of at the annual meeting.

Sections 12-14 address meetings of the board of directors.

Section 12 permits the board to meet by teleconference and limits application of AS 10.25.175 to a meeting at which a quorum of the board participates.

Section 13 expands the subjects that may be discussed in an executive session.

Section 14 changes the effect of violation of the open meetings requirement contained in this section. The law now provides that action taken in violation of the section is void. The amendment requires the court to consider appropriate equitable relief instead of voiding the action.

Section 15 permits a cooperative to withhold certain materials from inspection by its members.

Section 16 permits decisions concerning mergers to be taken by mailed ballot rather than at a meeting of the membership.

Representative Dave Donley  
Page 3  
February 2, 1988

Section 17 permits decisions concerning consolidation to be taken by mail rather than at a meeting of the members.

Section 18 increases the required to approve a dissolution of the cooperative from a simple majority to a two-thirds majority. It also permits the decision to be made by mail.

Sections 19 and 20 address the sale, lease, or disposal of a substantial portion of a cooperative's property.

Section 19 applies AS 10.25.400 to any transaction disposing of more than 15 percent of the cooperative's total assets. It also permits voting by mail, increases the margin required for approval from a simple majority to a two-thirds majority, declares that an election is not valid unless at least 10 percent of the eligible members returned ballots, and exempts transactions with the state from the section.

Section 20 requires appraisal of the property to be disposed of, and notification of the members of the issue and of alternative proposals.

Section 21 is an immediate effective date clause.

TC:bb  
wkb2/036



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

April 21, 1988

MEMORANDUM

TO: Representative John Sund

ATTN: John Hartle

FROM: Ginny Fay *G. Fay*  
Legislative Analyst

RE: Electric and Telephone Cooperatives: Sectional Review of House  
Bill 394  
Research Request 88.241

You asked us to identify the effects of House Bill 394-An Act relating to electric and telephone cooperatives (attached). In answering this request, this memorandum briefly discusses each section of the bill.

House Bill 394 has two primary objectives--1) it sets up a procedure for a private corporation to acquire or merge with a cooperative utility, and 2) it clarifies inconsistencies in the Electric and Telephone Cooperative Act and provides the statutory authority for technological advances and activities currently undertaken by cooperatives. In other states, there has been an increasing occurrence of acquisition of cooperative utilities by larger private corporations; much of HB 394 is in response to this perceived threat. House Bill 394 establishes a systematic procedure for mergers or acquisitions that assures that the cooperative membership has an opportunity to vote on the disposition of cooperative assets.

The Electric and Telephone Cooperative Act was established in 1959 and has had numerous amendments. House bill 394 cleans up inconsistencies in the the Act resulting from its long history of changes. In addition, there are technological advances and administrative changes--that the cooperative utilities have instituted and state policy allows--for which the bill provides more explicit statutory authority. The following sections of this memorandum provide information on each section of the bill.

### Section 1

Section 1 removes reference to AS 10.25.245 in AS 10.05.376(c). Section 25 of the bill repeals AS 10.25.245.

### Section 2

Section 2 amends 10.24.010 to allow cooperatives to make donations for the public welfare or for charitable, scientific, or educational purposes. Cooperatives currently make donations which are recoverable in the rates; one example is electric cooperative donations to the Electric Power Research Institute. This amendment would more clearly establish the statutory authority for these types of donations. The Alaska Public Utilities Commission (APUC) has indicated that they have some concerns regarding the interpretation of the language "public welfare" (page 2, line 18).

### Section 3

This section disallows the use of cooperative funds to promote or oppose a candidate being considered as a director of a cooperative. This amendment is in response to the belief that an electric cooperative used funds to promote the candidacy of a director from the cooperative's management.

### Section 4

Section 4 provides the statutory authority for electric cooperatives to operate a waste heat distribution system (page 3, line 23). Without the assurance of cost recovery in rates, it is unlikely that cooperatives would invest in this relatively new technology. Section 4 also allows electric cooperatives to operate existing heating distribution systems. This amendment would allow the Golden Valley Electric Association (GVEA) to operate the Fairbanks Municipal Utility System (FMUS) heat distribution system if GVEA were to purchase or merge with FMUS.

### Section 5

Section 5 pertains to the bylaws of cooperatives and provides that cooperative members can adopt, amend, or repeal the bylaws by an affirmative vote of a majority of the members on a "question." The broadening of the language to question allows for voting to occur by mail, including votes on the potential sale of a cooperative.

#### Section 6

Section 6 addresses Internal Revenue Service (IRS) requirements that 85 percent of cooperative sales must be to its membership for the cooperative to have tax exempt status. The bill allows cooperative bylaws to require membership as a condition for obtaining service. This change assures that the IRS requirement can be met (page 4, line 25-26). Section 6 also provides for the termination or suspension of membership if termination procedures are contained in the cooperative's bylaws. Termination of membership does not, however, imply termination of service. In order to terminate service, fairly stringent procedures under the APUC statutes must be followed (AS 42.05.261).

#### Section 7

This section provides for a 90-120 day notice period for special meetings of cooperative boards. The inference to special meetings pertains to Section 23 of the bill, which covers the procedures for the sale of cooperatives.

#### Section 8

Section 8 authorizes voting by mail on any issue coming before the cooperative membership. While voting by mail is currently allowed, this change to the statute makes the voting process less susceptible to legal challenge. It also removes the provision for voting by proxy; proxy voting is unnecessary under the mail voting procedure.

#### Section 9

To determine the eligibility of members to vote, Section 9 establishes a record date of 90 days before a vote is submitted to the cooperative membership. This section was added to reduce the ability of special interest groups to add members before an election to influence its outcome.

#### Section 10

Section 10 requires that cooperative bylaws contain provisions for the recall of members of the board of directors. In addition, this section establishes that cooperative board members be paid per diem for each day of meetings rather than for each meeting. The current statute allows cooperative board members to receive multiple per diem for attending more than one meeting on a given day.

#### Section 11

Section 11 extends the provisions of the recently passed tort reform package--providing nonprofit board members protection from liability law suits--to cooperative board members. The new section of the Act relieves liability for conduct within the scope of board members' duties where no negligence is involved. This aspect of the tort reform package has made recruitment of board members more successful for nonprofit corporations covered by this provision.

#### Section 12

Section 12 clarifies that all directors are elected. It also removes unnecessary language and allows for the election of board of director by mail.

#### Section 13

This section clarifies that a meeting is held each year for the election of members of the board of directors.

#### Section 14

Section 14 establishes that meetings of cooperative boards of directors can be held by teleconference if a quorum exists and notice has been given.

#### Section 15

Section 15 expands the conditions for executive sessions of the boards of directors. The new conditions include a member's financial record; status of current labor negotiations and personnel matters; matters specifically exempted from disclosure by law; sealed bids, trade secrets, or other confidential commercial information; and discussion of litigation by or against a cooperative. These grounds for executive sessions are similar to those covered by the Alaska open meetings law (AS 44.62.310-312).

#### Section 16

Section 16 provides for more court discretion for cooperative meetings that are deemed to have not been held openly or with proper notice. Rather than action taken in the improper meeting being automatically voided, the court can grant equitable relief after considering the circumstances of the case. This provision can potentially save cooperatives considerable funds because lengthy or costly meetings would not have to be repeated in their entirety.

#### Section 17

This section pertains to a member's right to examine cooperative books and records and provides that the cooperative can withhold information concerning specific matters that were prepared during or for an executive session and not subsequently made public by the cooperative. In addition, a cooperative may withhold the identity of public information that was referred to during an executive session. The language of this section is rather broad and potentially allows an umbrella for withholding information from cooperative members.

#### Section 18

This section allows for mail voting on cooperative mergers rather than requiring voting to occur at meetings.

#### Section 19

This section specifies that telephone or electric cooperatives cannot merge unless the surviving cooperative complies with all existing labor agreements of the merging cooperatives. This means that the resultant cooperative cannot collectively bargain for one labor contract but instead must honor the conditions of both the merging and surviving cooperatives' labor agreements. This could be a costly provision for cooperatives.

#### Section 20

Section 20 clearly establishes that a membership vote on cooperative consolidation can be done by mail.

#### Section 21

Section 21 pertains to the dissolution of cooperatives. It clarifies language and requires cooperatives with fewer than 10,000 subscribers--which is generally equivalent to meters served rather than individual persons--to have a two-thirds affirmative vote of the members for a dissolution. Cooperatives with over 10,000 subscribers require an affirmative vote of the majority of the membership. The subscriber cutoff covers all electric cooperatives in Alaska except the four Railbelt electric cooperatives. This section also allows for a dissolution vote to be conducted by mail.

## Section 22

For the purposes of the disposition of cooperative property, this section clarifies "all or a substantial portion of its property" to be more than 15 percent. The 15 percent figure is based on an Alaska Rural Electric Cooperative Association (ARECA) review of recent legislation in other states. Other states' legislation cite 8-25 percent; 15 percent was used as an average. Voting requirements for disposition of a substantial portion of assets are the same as those set forth in Section 21 for cooperative dissolution. In addition, this section allows the sale of cooperative property to the state or another cooperative to be approved by a vote in which at least ten percent of eligible members return ballots. This sale requirement is not as stringent as that required for the sale of cooperative assets to a private corporation because the former is not perceived as a potentially hostile take-over. This section also requires the labor provision set forth in Section 19 discussed above be a condition for the sale of cooperative property.

## Section 23

Section 23 establishes a procedure for the disposition or sale of cooperatives. Generally, it requires that before more than 15 percent of a cooperative's assets can be sold, the board of directors must--1) have the property appraised, 2) provide at least 90 days notice to members, 3) notify other cooperatives of proposals for the disposition of property at least 90 days before the membership vote, 4) at least 30 days before the vote, notify members of any alternative proposals, and 5) place each proposal for which notice has been given on a ballot. Section 23 also provides that these requirements apply only to the selling of a cooperative or its assets and not to the merger or consolidation of cooperatives covered under AS 10.25.240-300. ARECA is proposing that "real and personal property" (page 13, line 11) be amended to say "tangible and intangible property" to assure that existing assets such as contracts be covered.

## Section 24

This section clarifies that the conditions established by Section 23 do not apply to sales of cooperative property that were approved by the members before the effective date of this Act.

Representative Sund  
April 21, 1988  
Page 7

#### Section 25

Section 25 repeals AS 10.25.245, which was passed in 1980 for the potential merger of Alaska Electric Light & Power Company and the Glacier Highway Electric Association, Inc. Because this section was never used and section 23 establishes a sale procedure with more stringent membership voting requirements, AS 10.25.245 is being repealed. In addition, the repeal of AS 10.25.245 prevents the possibility of a private utility merging with--rather than purchasing--a cooperative under the less stringent voting requirements of this section.

#### Section 26

This section establishes the Act's effective date to be immediate upon its passage.

\* \* \*

I hope this information is helpful. Please call if you have additional questions.

Attachment



Cordova Electric Cooperative, Inc.

P O BOX 20

CORDOVA, ALASKA 99574

(907) 424-5555

RECEIVED  
MARCH 29 1988

March 29, 1988

Mr. Dave Hutchens  
Executive Director  
Alaska Rural Electric  
Cooperative Association  
237 East Fireweed Lane  
Anchorage, Alaska 99503

Dear Dave,

I wanted to let you know the outcome of the advisory vote last night at our annual meeting. We did not have time to formally notice the question so we made it advisory and asked each member to write the percentage who should vote in favor of a sellout before the Cooperative could be sold. We suggested either the current requirement of one half of the members and the proposed 2/3 of the members. I have tabulated the results below:

one half of members	3
two thirds of members	56
three quarters of members	1
no indication	<u>17</u>
total votes cast	77

The large number of "No Indication" ballots were cast by people who were not in the room when we discussed the issue or who voted before the announcement.

Obviously, the members of Cordova Electric Cooperative are worried about a takeover attempt and want to protect their cooperative.

Sincerely,

*Doug*

W. D. Bechtel  
General Manager



## ERA® REALTY CENTER

October 12, 1987

Ak. Village Elect. Co-op  
4831 Eagle St.  
Anchorage, AK 99503

ATTN: Vincent T. Beans

Dear Mr. Beans:

Our firm has been requested by a major U.S. Corporation to search for power facilities or companies throughout Alaska that would perhaps consider selling.

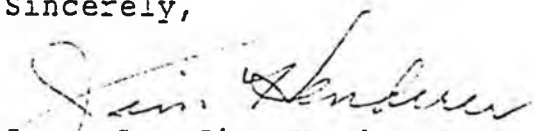
This major firm is presently involved in power and telecommunications throughout the contiguous United States, South Pacific, Hawaii and Alaska. They have unlimited financial resources in addition to a very wide range of technical personnel.

They have indicated an interest in acquiring generation and power facilities ranging from the smallest timber, mining and fishing villages, to those of the major service areas in the state. They have already purchased some utilities within this state and are looking for more.

This letter will be followed by a personal phone call to you within the next several weeks. Should your organization have an interest in selling your facility or entering into an on-site management agreement wherein the day to day operating responsibilities would be assumed by one of the operating divisions of this major corporation, please call me at the number shown below. I shall assist you in your negotiations with them.

If you need further in-depth information, please feel free to contact me.

Sincerely,

  
James L. (Jim) Henderer  
Director--Commercial Investment Division  
ERA-Realty Center  
6400 Hartzell Rd.  
Anchorage, AK 99507  
Phone: (907) 344-0501

KODIAK ELECTRIC ASSOCIATION, INC.

KODIAK, ALASKA

RESOLUTION

1988 ANNUAL MEMBERSHIP MEETING  
MEMBERSHIP RESOLUTION

WHEREAS, the Electric and Telephone Cooperative Act (AS10.25), originally enacted in 1959, is now outdated and has been amended in ways which produced internal inconsistencies; and

WHEREAS, the Alaska Rural Electric Cooperative Association (ARECA) has conducted a thorough study of the changes in this statute necessary for the efficient operations of the cooperative utilities and the effective control of those utilities by their member-consumers; and

WHEREAS, Kodiak Electric Association, Inc. (KEA) participated in the ARECA study of AS 10.25 and would benefit from the resulting proposed legislation; and

WHEREAS, HB 394 is the proposed legislation resulting from the ARECA effort;

THEREFORE, BE IT RESOLVED:

1. The membership of KEA supports the changes to AS 10.25 proposed by HB 394; and
2. The membership of KEA believes the requirement contained in HB 394 for a two-thirds vote of the members to agree to a takeover of this cooperative is an important protection for the members.

CERTIFICATION

I, Lynne Searge, Secretary of Kodiak Electric Association, Inc., an electrical non-profit cooperative membership corporation organized and existing under the laws of the State of Alaska, do hereby certify that I am selected Secretary of the State of Alaska; that the foregoing is a complete and correct copy adopted at a meeting of the Board of Directors of this corporation, duly and properly called and held on the 4 day of April, 1988, that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this 4 day of

April 1988

(SEAL)

Secretary

Lynne Searge

*Amendments to Electric and Telephone  
Cooperative Act (AS 10.25)*

*Comments from Alaska Rural Electric  
Cooperative Association (ARECA)*

Introduction

The Electric and Telephone Cooperative Act was originally enacted in 1959 as a variation of the model state legislation recommended by the Rural Electrification Administration (REA), a unit within the U.S. Department of Agriculture. The REA serves as the principal banker for most electric and telephone cooperatives, and this relationship accounts for their strong and continuing interest in our state enabling legislation.

The environment within which the coops operate has changed immensely during the last 29 years, and the old model act no longer covers everything that is needed in Alaska law. There have been a number of amendments to AS 10.25 through the years, and some internal inconsistencies within the Act have resulted from some of those amendments.

ARECA had a committee from across the state study AS 10.25 for about a year to develop the changes which are needed to clear up ambiguities, to permit cooperatives to operate efficiently, and to assure proper control of the cooperatives by the members. The draft prepared by that committee and unanimously approved by the members of the association provided the starting place from which SB 369 and HB 394 were prepared.

Mail Voting

One kind of change which appears in numerous locations throughout these bills is to clear up the conflicting language on how membership votes may be conducted. The legislature decided long ago that coops should have the option of conducting elections and other membership votes by mail. However, a number of sections still refer to such decisions being made "at the meeting." These bills would make it clear that, if the bylaws so provide, all membership votes can be conducted by mail.

Takeovers/Sellouts

A second change which required amendments in several sections is to make certain that any proposed sale of a cooperative is considered by an informed membership and that a decision to sell must be agreed to by a substantial proportion of the members of the cooperative (Sec. 5, 18, 19, 20). The sale or dissolution of a cooperative is final and irreversible. Such a momentous decision should not be made lightly or by a simple majority. If a pro-sale majority one day becomes a minority on some other day, there is no way to unscramble the egg. To protect the interests of the cooperative members against transitory swings in public opinion, a large majority should be required to agree to the death of the cooperative. In these bills, a two-thirds majority is proposed.

### Powers of Cooperatives

The authority to make contributions for various public purposes (Sec. 1) is adopted verbatim from the law governing all other types of cooperatives in this state (AS 10.15.010 (12)). A typical instance in which this authority is needed is when some local civic or charitable group plans an event for which it needs a temporary service. In many such cases, the cooperative would like to support the local effort by making an in-kind contribution of the temporary service drop rather than having to charge according to its line extension policy. Another example is to permit the electric coops to participate in the National Electric Power Research Institute.

Electric cooperatives would also be authorized to operate waste heat distribution systems (Sec. 2). Since 1980, the legislature has encouraged the use of waste heat, but the cooperatives have no clear authority to engage in that business. The authority to operate an existing system (other than waste heat) is intended to permit Golden Valley Electric Association to operate the Fairbanks district heating system now owned by the city if the city should decide to divest itself of that system.

### Members

The provision to permit cooperatives to require membership as a condition of service (Sec. 4) is necessary to protect the coops from the possibility of losing their tax exempt status. The Internal Revenue Service (IRS) requires cooperatives to get not less than 85 percent of their revenues from providing service to members.

The provision prohibiting cooperatives from terminating or suspending memberships (Sec. 4) unless their bylaws establish the procedure, is also necessary to keep the coops out of trouble with the IRS. Terminating or suspending a membership without due process can cause the loss of a tax exemption. This provision was adapted from California Corporate Code 12410, Article 4.

### Notice of Meetings

The increase in notice requirements for special meetings of the members (Sec. 5) is necessary to give adequate time for the informational processes established in Section 20 to be used when a special meeting is called to sell a cooperative.

### Record Date

Establishing a record date for the right to participate in membership meetings (Sec. 7) helps to eliminate disputes as to the legality of actions taken by the members on hotly contested issues at annual or special meetings or other cooperative elections. This new section was adapted from the Alaska Business Corporation Act (AS 10.05.144).

### Board Compensation

The principal change in Section 8 is to clarify the law on the payment of per diem to directors. The intent is to make it clear that directors can be compensated for the days on which the director is attending meetings in the performance of duties, not just

attendance at formal meetings of the board. However, the language needs to be amended to make it clear that it is a day rather than a meeting which authorizes the payment of per diem. (If a director were to go to three meetings on one day, the director should receive one per diem payment, not three.) To accomplish this, on page 6, line 12, the words "and at a" should be replaced with "or other."

#### Liability, Indemnification, and Insurance

The new language contained in Section 9 is necessary to protect directors and officers from individual liability for actions properly taken in the course of their duties. Subsection (a) limits the liability; (b) authorizes the cooperative to indemnify the directors; and (c) authorizes the cooperative to buy directors' and officers' liability insurance as a way to provide the indemnification. Similar limitations on personal liability are provided for directors and officers of business corporations (AS 10.05.010 (g)) and for many non profit corporations, public hospitals, public schools, and municipalities (AS 9.17.050).

#### Board Meetings

Board meetings could be conducted by teleconference (Sec. 12). A similar provision is made for boards of business corporations (AS 10.05.199 (a)).

Several specific items are listed which would permit a board of directors to meet in executive session (Sec. 13). Each of these specifics was thought to be encompassed in the general reasons for executive sessions listed as 1 - 3 when this statute was enacted in 1982. Recent court decisions have cast some doubt on that assumption, so listing these specific items is necessary.

The penalty for violations of the meetings statute needs to be rewritten as is done in Section 14 to permit the court to determine the appropriate equitable relief. Under the present law the only penalty authorized is to void any action taken at a meeting not in compliance with this section of the law. Recent court decisions seem to indicate that there is no way to correct actions taken incorrectly once they have been voided. This could cripple a cooperative if action on a major item like a power supply contract were voided.

#### Examination of Records

Information on subjects which can properly be discussed in executive session should also be protected in written form (Sec. 15). For example, it does no good to go into executive session to discuss an individual consumer's payment history if the records of that payment history are themselves available for inspection.

#### Limitations on Sale of Property

In addition to requiring a two-thirds vote to sell a cooperative as discussed earlier, Section 19 clarifies the law on exactly which sales of coop property must be referred to a vote of the members.

Section 20 establishes a procedure for having the cooperative's property appraised, informing the members, and inviting competing proposals. The purpose of this section is to protect the members by making sure they know what the coop's property is worth before they vote on an offer to buy it.

We do propose that this section be amended on page 12, line 11 by changing the phrase "have this property appraised" to "have all the real and personal property proposed for sale appraised". The reason for this change is to inform the members about the value of personal property such as long-term power supply contracts which would not show up on the books of the cooperative.

Sale of Glacier Highway Electric Association to Alaska Electric Light and Power

The possible merger of the two utilities in the Juneau area has been under negotiation, off and on, for about 20 years. We do not want to change the rules regarding that possible transaction when it is so near completion. A new section on "transitional provisions" should be added which provides that any sale of cooperative property approved by the members under AS 10.25.400 before the effective date of this Act will be valid even if the transaction is not completed by the effective date.

Another new section needs to be added to repeal AS 10.25.245. This section was enacted in 1980 at the request of GHEA, and it was intended to make a merger with AEL&P easier. The negotiations have proved this approach not to be practical, and it is not used in the proposed sale of GHEA to AEL&P. This section serves no purpose, and we ask that it be repealed.

A R E C A

REVISIONS TO THE ELECTRIC AND TELEPHONE COOPERATIVE ACT

DISCUSSION DRAFT

January 1988

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CHAPTER 25. ELECTRIC AND TELEPHONE COOPERATIVE ACT.

Article 1. Substantive Provisions.

Sec. 10.25.010. Powers of electric or telephone cooperative.  
An electric or telephone cooperative may

- (1) sue and be sued in its corporate name;
- (2) have perpetual existence;
- (3) adopt a corporate seal and alter it;
- (4) construct, buy, lease, or otherwise acquire, and equip, maintain, and operate, and sell, assign, convey, lease, mortgage, pledge, or otherwise dispose of or encumber lands, buildings, structures, electric or telephone lines or systems, fuel transportation and production facilities; dams, plants and equipment, and any other real or personal property, tangible or intangible, which is necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- (5) buy, lease, or otherwise acquire, and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;
- (6) borrow money and otherwise contract indebtedness, and issue evidences of indebtedness, and secure the payment of the indebtedness by mortgage, pledge, or deed of trust of, or any other encumbrance upon its real or personal property, assets, franchises, or revenues;
- (7) construct, maintain, and operate electric transmission and distribution lines, or telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways;
- (8) exercise the power of eminent domain;
- (9) become a member of other cooperatives or corporations or own stock in them[;] or enter into joint ventures with other persons, cooperatives, corporations; the state or a political subdivision thereof;
- (10) conduct its business and exercise its powers inside or outside the state;
- (11) adopt, amend and repeal bylaws;
- (12) make all contracts necessary, convenient or appropriate for the full exercise of its powers;
- (13) donate for the public welfare or for charitable, scientific or educational purposes;
- (14) do and perform any other act and thing, and have and exercise any other power which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized. (§ 4(1) ch 93 SLA 1959)

Sec. 10.25.020. Powers of electric cooperative. An electric cooperative may

3  
20 (1) either jointly or individually, generate, manufacture, plan for, purchase, acquire, accumulate and transmit electric energy and heat, and distribute, sell, supply and dispose of electric energy and heat to its members, to governmental agencies and political subdivisions, and to other persons not exceeding 10 per cent of the number of its members; however, a cooperative which acquires existing electric facilities may continue service to persons, not in excess of 40 per cent of the number of its members, who are already receiving service from these facilities without requiring them to become members, and these persons may become members upon the terms as may be prescribed in the bylaws;

(2) assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by financing them, and in connection with these services wire or have wired the premises, and buy, acquire, lease, sell, distribute, install and repair electric and plumbing appliances, equipment, fixtures and apparatus;

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

4 (4) participate in economic development activities in the service area of the cooperative. (§ 4(2) ch 93 SLA 1959)

Sec. 10.25.030. Powers of telephone cooperative. A telephone cooperative may

(1) furnish, improve and expand telephone service and related telecommunications service to its members, and to other users not in excess of 10 percent of the number of its members; however, telephone service may be made available by a cooperative through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users, and a cooperative which acquires existing telephone facilities may continue service to persons, not exceeding 40 percent of the number of its members, who are already receiving service from the facilities without requiring them to become members, and these persons may become members upon terms as may be prescribed in the bylaws;

(2) connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(3) make its facilities available to persons furnishing telephone service inside or outside the state. (§ 4(3) ch 93 SLA 1959; am § 1 ch 136 SLA 1982)

Sec. 10.25.040. Name. The name of a cooperative shall include the words "electric" or "telephone," as appropriate to its purpose, and "cooperative," and the abbreviation "inc." The name of a cooperative shall be distinct from the name of other cooperatives or corporations organized under the laws of or authorized to do business in this state. This section does not apply to a corporation which becomes subject to this chapter by compliance with §§ 290 and 300 or 600 of this chapter and which elects to retain a corporate name which does not comply with this section. (§ 5 ch 93 SLA 1959)

Sec. 10.25.050. Incorporators. Five or more persons, including cooperatives, may organize a cooperative. (§ 6 ch 93 SLA 1959)

Sec. 10.25.060. Articles of incorporation. (a) The articles of incorporation of a cooperative shall recite that they are executed under this chapter and shall state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the names and the addresses of the incorporators;
- (4) the names and addresses of its directors;

(b) The articles may contain any provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of its business. The articles shall be signed by each incorporator and acknowledged by at least two of the incorporators, or on their behalf, if they are cooperatives. It is not necessary to recite in the articles the purpose for which the cooperative is organized or any of its corporate powers. (§ 7 ch 93 SLA 1959)

5 Sec. 10.25.070. Bylaws. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the district delegates in cooperatives having three or more districts that are not connected by a road system to another district of the cooperative may adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the district delegates voting on the adoption, amendment, or repeal at a meeting of the district delegates. In all other cooperatives the members shall adopt, amend, or repeal the bylaws by the affirmative vote of a majority of the members voting on the adoption, amendment, or repeal. [either at a meeting of the members or by mail ballot without a meeting.] The bylaws shall set out the rights and duties of members, district delegates, and directors and may contain other provisions for the regulation and management of the affairs of the cooperative consistent with this chapter or with the articles of incorporation of the cooperative. (§ 8 ch 93 SLA 1959; am § 1 ch 136 SLA 1968; am § 1 ch 120 SLA 1986)

19           Sec. 10.25.080. Members. Each incorporator of a cooperative shall be a member of the cooperative or of another cooperative that is a member of it. No person may become a member unless that person agrees to use electric energy, or telephone service, or other services furnished by the cooperative when they are made available through its facilities. The bylaws may require membership as a condition of obtaining service from the cooperative. Membership in a cooperative is not transferrable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations on membership. The bylaws may provide for the termination or suspension of membership, provided that no membership may be terminated unless the procedures for termination are contained in the bylaws. (§ 9 ch 93 SLA 1959; am § 1 ch 66 SLA 1982)

6           Sec. 10.25.090. Meetings of members. (a) An annual meeting of the members of a cooperative shall be held at the time and place provided in the bylaws. An annual meeting of the members of a cooperative which has been divided into districts as provided for in § 190 of this chapter may consist of separate annual meetings of the members of each district.

(b) Special meetings of the members or district delegates may be called by a majority of the board of directors or by not less than 10 per cent of all members or 10 per cent of all district delegates. A special meeting of the members of a cooperative which has been divided into districts as provided for in § 190 of this chapter may consist of separate special meetings of the members of each district.

(c) An annual meeting of district delegates of a cooperative shall be held at the time and place provided in the bylaws. (§ 10(1) (2) ch 93 SLA 1959; am § 2 ch 136 SLA 1968)

7           Sec. 10.25.100. Notice of meetings. Except as otherwise provided in this chapter, written notice stating the time and place of [each] the annual meeting of the members or district delegates [and, in the case of a special meeting, the purpose or purposes for which the meeting is called,] shall be given to each member or district delegate, either personally or by mail, not less than 20 days nor more than 40 days before the date of the meeting. Notice of a special meeting of the members, together with notice of the purpose or purposes for which the meeting is called, shall be given to each member or district delegate, either personally or by mail, not less than 90 days nor more than 120 days before the date of the meeting. If mailed, notice is considered given when it is deposited in the United States mail with postage prepaid addressed to the member or district delegate at his address as it appears on the records of the cooperative. (§ 10(3) ch 93 SLA 1959; am § 3 ch 136 SLA 1968)

Sec. 10.25.110. Quorum requirements. (a) Unless the bylaws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative or the members of a district of a cooperative having not more than 1,000 members is five per cent of all members, present in person, and a quorum for the transaction of business of the members of a cooperative or the members of a district of a cooperative having more than 1,000 members is 50 members, present in person. If less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(b) Unless the bylaws prescribe the presence of a greater percentage of the district delegates for a quorum, a quorum for the transaction of business at all meetings of the district delegates of a cooperative is 25 per cent of all district delegates. (§ 10(4) ch 93 SLA 1959; am § 4 ch 136 SLA 1968)

5 Sec. 10.25.120. Voting. Each member is entitled to one vote  
on each matter submitted to a vote [(1) at a meeting of the mem-  
bers or (2) by mail ballot permitted by AS 10.25.070]. Each  
8 member of a district is entitled to one vote on each matter sub-  
mitted to a vote at a district meeting. A member is not entitled  
to vote by proxy. Voting [at a meeting shall be in person, but],  
if the bylaws so provide, may [also] be by mail. (§ 10(5) ch 93  
SLA 1959; am § 2 ch 136 SLA 1982; am § 2 ch 120 SLA 1986)

9 Sec. 10.25.125. Record date. To determine the members  
entitled to notice of a meeting of the members, or to vote on a  
matter which is to be submitted to a vote of the members, or in  
order to make a determination of members for any other proper  
purpose, the board of directors may fix in advance a date as the  
record date for the determination of members. If no record date  
is fixed for the determination of members entitled to notice of a  
meeting of members or to vote on a matter which is to be sub-  
mitted to a vote of the members, the date on which notice of the  
meeting is first mailed or notice of mail voting is first mailed,  
is the record date for the determination of members. When a  
determination of members entitled to vote at a meeting of members  
is made, the determination applies to an adjournment of the  
meeting.

Sec. 10.25.130. Waiver of notice. A person entitled to  
notice of a meeting may waive notice in writing either before or  
after the meeting. Attendance at a meeting is a waiver of notice  
of the meeting, unless the person attends solely to object to the  
transaction of business because the meeting has not been legally  
called or convened. (§ 11 ch 93 SLA 1959)

10 Sec. 10.25.140. Board of directors. The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another cooperative which is a member of it. The bylaws shall prescribe the number of directors, their qualifications other than those prescribed in this chapter, and the manner of holding meetings of the board of directors and of electing successors to directors who resign, die, or are otherwise incapable of acting. The bylaws may provide for the removal for cause of directors from office and for the election of their successors. Directors shall not receive salaries for the services as directors and, except in emergencies, shall not receive salaries for their services in any other capacity without the approval of the members. 11 The bylaws may, however, prescribe a fixed fee for each day of attendance at meetings while officially representing the cooperative [for attendance at each meeting of the board of directors] and may provide for insurance and reimbursement of actual expenses incurred while performing their duties as directors [of attendance]. (§ 12(1) ch 93 SLA 1959)

12(a) Sec. 10.25.145. Liability and indemnification of officers, directors, employees and agents: Insurance. (a) A director, officer, employee or agent of the cooperative is not individually liable for any action, inaction or omission except for any action, inaction or omission which the director, officer, employee or agent did not reasonably believe to be in or not opposed to the best interests of the cooperative.

12(b) (b) Unless prohibited by the articles of incorporation or bylaws, the cooperative shall indemnify a director, officer, employee or agent of the cooperative, or a person who is or was serving at the request of the cooperative as a director, officer, employee or agent of another cooperative corporation, joint venture, trust or other enterprise, who is a party or is threatened to be made a party to a threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense, settlement, action or proceeding, except for any action, inaction or omission which the director, officer, employee or agent did not reasonably believe to be in or not opposed to the best interests of the cooperative, and, with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

12(c) (c) A cooperative may purchase and maintain insurance on behalf of a director, officer, employee or agent of the cooperative, or who is or was serving at the request of the cooperative as a director, officer, employee or agent of another cooperative corporation, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such a

12(c) capacity, or arising out of his status as such, whether or not  
cont'd the cooperative would have the power to indemnify him against the  
liability under the provisions of this section.

5 Sec. 10.25.150. Term of office of directors. The directors of a cooperative named in articles of incorporation, consolidation, merger or conversion hold office until the next annual meeting of the members and until their successors are elected and qualify. [At each annual meeting, or in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this chapter.] Each director holds office for the term for which he is elected and until his successor is elected and qualifies. (§ 12(2) ch 93 SLA 1959)

5 Sec. 10.25.160. Staggered terms of office for directors. Instead of electing all directors annually, the bylaws may provide that directors shall be elected for terms not to exceed three years, or until their successors are elected and qualify, and that the terms of directors shall be staggered so that one-third of the directors, or a number as close to one-third as possible, shall be elected each year [at each annual meeting]. (§ 12(3) ch 93 SLA 1959)

Sec. 10.25.170. Quorum of board. A majority of the board of directors constitutes a quorum. (§ 12(4) ch 93 SLA 1959)

14(c) Sec. 10.25.175. Board meetings open; exceptions. (a) A meeting of the board of directors may be attended by members of the cooperative. Except when voice votes are authorized, a vote shall be conducted in such a manner that the members may know the vote of each person entitled to vote. For purposes of this section, a meeting is defined as a meeting at which there occurs the deliberations of at least the number of individual directors required to take action on behalf of the cooperative.  
13 The board of directors may conduct a meeting by communicating simultaneously with each other by means of conference telephones or similar communications equipment.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a regular or special meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the board. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No formal action may be taken during the executive session.

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

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

(2) subjects that tend to prejudice the reputation and character of a person; however, the person may request a public discussion;

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

(4) labor negotiations;

(5) personnel matters;

14(a) (6) matters specifically exempted from disclosure by statute, the articles of incorporation or bylaws;

(7) bids, trade secrets or other confidential commercial information;

(8) information concerning a member's payment history, creditworthiness or outstanding accounts with the cooperative;

(9) discussion of litigation by or against the cooperative.

(d) Notice shall be given for all regular or special meetings of the board of directors as provided in the bylaws of the cooperative.

14(b) [(e) Action taken contrary to this section is void.]

(e) Any member affected by action taken contrary to this section may commence a suit in the superior court, and the court may order such equitable relief as it deems appropriate in the circumstances. Action taken contrary to this section shall not be voided if other equitable relief is available. (§ 3 ch 136 SLA 1982)

Sec. 10.25.180. General powers of board. The board of directors may exercise all of the powers of a cooperative not conferred upon the members by this chapter, its articles of incorporation or its bylaws. (§ 12(5) ch 93 SLA 1959)

Sec. 10.25.190. Districts. The bylaws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and functioning of district delegates. These delegates, who shall be members, may nominate and elect directors. The bylaws shall prescribe the boundaries of the districts, or the manner of establishing the boundaries, and the manner of changing the boundaries, and the manner in which the districts function. No member at any district meeting and no district delegate at any meeting may vote by proxy or by mail. However, the election of directors shall be by mail unless the bylaws provide otherwise. (§ 13 ch 93 SLA 1959; am § 4 ch 136 SLA 1982)

Sec. 10.25.200. Officers. The officers of a cooperative are a president, a vice president, a secretary and a treasurer. The officers shall be elected annually by the board of directors from among its members. When a person holding an office ceases to be a director, he ceases to hold office. The offices of secretary and of treasurer may be held by the same person. The board of directors may elect or appoint such other officers, agents, or employees as it considers necessary or advisable and shall prescribe their powers and duties. An officer may be removed from office and his successor elected in the manner prescribed in the bylaws. (§ 14 ch 93 SLA 1959)

Sec. 10.25.210. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation as follows, except that it may change the location of its principal office in the manner set out in § 230 of this chapter.

(1) The proposed amendment shall be presented to a meeting of the members or district delegates and the notice of the meeting shall set out or have attached to it the proposed amendment.

(2) If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of those members or district delegates voting on it, the president or vice president shall execute and acknowledge articles of amendment on behalf of the cooperative and the secretary shall affix and attest to the seal of the cooperative. (§ 15 ch 93 SLA 1959; am § 5 ch 136 SLA 1968)

Sec. 10.25.220. Contents of articles of amendment. (a) The articles of amendment shall recite that they are executed under this chapter and shall state

(1) the name of the cooperative;

(2) the address of its principal office;

(3) the amendment to its articles of incorporation.

(b) The president or vice president executing the articles of amendment shall make and annex to them an affidavit stating that the provisions of this section regarding the amendment were complied with. (§ 15 ch 93 SLA 1959)

Sec. 10.25.230. Change of location of principal office. A cooperative may, upon authorization of its board of directors or its members, change the location of its principal office by filing a certificate reciting the change of principal office, executed and acknowledged by its president or vice president under its seal, attested by its secretary, in the office of the commissioner. (§ 16 ch 93 SLA 1959)

14(d) Sec. 10.25.235. Member's right to examine books and records. A member of a cooperative may, at a reasonable time and for a proper purpose, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section. The cooperative may withhold books and records concerning subjects which may be discussed in executive session as specified in AS 10.25.175(c). (§ 3 ch 136 SLA 1982)

## Article 2. Merger and Consolidation.

Sec. 10.25.240. Merger. One or more cooperatives, each hereinafter designated "merging cooperative," may merge into another cooperative, hereinafter designated "surviving cooperative," by complying with the following requirements.

15 (1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger shall be submitted to [a meeting of] the members of each merging cooperative and of the surviving cooperative. The notice  
15 [of the meeting] shall have attached to it a copy of the proposed articles of merger.

15 (2) If the proposed merger and the proposed articles of merger, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each cooperative voting on them [at the meeting], articles of merger in the form approved shall be executed and acknowledged on behalf of each cooperative by its president or vice president and its seal shall be affixed by its secretary. (§ 18(1) (2) ch 93 SLA 1959)

16 Sec. 10.25.245. Merger of cooperative and corporation organized under AS 10.05.003 - 10.05.828. (a) A cooperative organized under the provisions of AS 10.25.010 - 10.25.650 may merge into a corporation organized under AS 10.05.003 - AS 10.05.828 that is engaged in business as and is certificated [as an electric or telephone utility] to provide the same type of public utility service as the cooperative and whose certificated area is contiguous with that of the cooperative.

(b) The cooperative shall comply with the provisions of AS 10.25.240 - 10.25.280 insofar as they set out the procedures for the merger of cooperatives.

(c) The manner in which the members of the cooperative may be compensated for any net remaining assets transferred to the corporation organized under AS 10.05.003 - 10.05.828 after the payment of the debts and liabilities of the cooperative shall be stated in the articles of merger. (§ 2 ch 10 SLA 1980)

Sec. 10.25.250. Contents of articles of merger. (a) The articles of merger shall recite that they are executed under this chapter and shall state

(1) the name of each merging cooperative and the address of its principal office;

(2) the name of the surviving cooperative and the address of its principal office;

(3) a statement that each merging cooperative and the surviving cooperative agree to the merger;

(4) the names and addresses of the directors of the surviving cooperative;

(5) the terms and conditions of the merger and the manner of carrying it into effect, including the manner in which members of the merging cooperatives may or shall become members of the surviving cooperative.

(b) The articles of merger may contain provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of the business of the surviving cooperative.

(c) The president or vice president of each cooperative shall make and annex to the articles an affidavit stating that the provisions of this section regarding the articles were complied with by the cooperative. (§ 18(2) ch 93 SLA 1959)

21 Sec. 10.25.260. Consolidation. Two or more cooperatives, including electric and telephone cooperatives organized under this Act, hereinafter designated "consolidating cooperative" may consolidate into a new cooperative, hereinafter designated the "new cooperative," by complying with the following requirements.

15 (1) The proposition for the consolidation into the new cooperative and proposed articles of consolidation shall be submitted to [a meeting of] the members of each consolidating cooperative. The notice [of the meeting] shall have attached to it a copy of the proposed articles of consolidation.

15 (2) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting on them, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice president and its seal shall be affixed and attested by its secretary. (§ 17(1) (2) ch 93 SLA 1959)

Sec. 10.25.270. Contents of articles of consolidation.

(a) The articles of consolidation shall recite that they are executed pursuant to this chapter and shall state

(1) the name of each consolidating cooperative and the address of its principal office;

(2) the name of the new cooperative and the address of its principal office;

(3) a statement that each consolidating cooperative agrees to the consolidation;

(4) the names and addresses of the directors of the new cooperative;

(5) the terms and conditions of the consolidation and the manner of carrying it into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative.

(b) The articles of consolidation may contain provisions not inconsistent with this chapter which are considered necessary or advisable for the conduct of the business of the new cooperative.

(c) The president or vice president of each consolidating cooperative executing the articles of consolidation shall make and annex to the articles an affidavit stating that the provisions of this section regarding the articles were complied with by the cooperative. (§ 17(2) ch 93 SLA 1959)

Sec. 10.25.280. Effect of consolidation or merger. (a) In the case of a consolidation the existence of the consolidating cooperatives ceases and the articles of consolidation are the articles of incorporation of the new cooperative. In the case of a merger the separate existence of the merging cooperatives ceases and the articles of incorporation of the surviving cooperative are amended to the extent that changes are provided for in the articles of merger.

(b) The rights, privileges, immunities and franchises, and all real and personal property including, without limitation, applications for membership, all debts due on whatever account and all other choses in action, of the consolidating or merging cooperatives are transferred to and vested in the new consolidated or surviving cooperative without further act or deed.

(c) The new consolidated or surviving cooperative is responsible and liable for the liabilities and obligations of each of the consolidating or merging cooperatives and a claim existing or action or proceeding pending by or against the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new consolidated or surviving cooperative may be substituted in its place.

(d) Neither the rights of creditors nor liens upon the property of the cooperatives is impaired by the consolidation or merger. (§ 19 ch 93 SLA 1959)

Sec. 10.25.290. Conversion of existing corporation. A corporation organized under the laws of the state and supplying or having the corporate power to supply electric energy, or to furnish telephone service, may be converted into a cooperative by complying with the following requirements and thereupon becomes subject to this chapter as if originally organized under this chapter.

(1) The proposition for the conversion of the corporation into a cooperative and proposed articles of conversion shall be submitted to a meeting of the members or stockholders of the corporation, or in case of a corporation having no members or stockholders, to a meeting of the incorporators of the corporation. The notice of the meeting shall have attached to it a copy of the proposed articles of conversion.

(2) If the proposition for the conversion of the corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of the corporation voting on them or, if the corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of the corporation represented at the meeting and voting on them, or, in the case of a corporation having no members and no shares of its capital stock outstanding, by the affirmative vote of not less than two-thirds of its incorporators, articles of conversion in the form approved shall be executed and acknowledged on behalf of the corporation by its president or vice president and its seal shall be affixed and attested by its secretary. (§ 20(1) (2) ch 93 SLA 1959)

Sec. 10.25.300. Contents of articles of conversion. (a) The articles of conversion shall recite that they are executed under this chapter and shall state

(1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative;

(2) the statute or statutes under which it was organized;

(3) a statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(4) its name as a cooperative;

(5) the address of the principal office of the cooperative;

(6) the names and addresses of the directors of the cooperative;

(7) the manner in which members, stockholders or incorporators of the corporation are to become members of the cooperative.

(b) The articles of conversion may contain provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business of the cooperative.

(c) The president or vice president executing the articles of conversion shall make and annex to it an affidavit stating that the provisions of this section were complied with regarding the articles. The articles of conversion are the articles of incorporation of the cooperative. (§ 20(2) ch 93 SLA 1959)

### Article 3. Dissolution.

Sec. 10.25.310. Dissolution of cooperative which has not commenced business. A cooperative which has not commenced business may be dissolved by delivering articles of dissolution to the commissioner. A majority of the incorporators shall execute and acknowledge articles of dissolution on behalf of the cooperative. The articles shall state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) that the cooperative has not commenced business;
- (4) that sums received by the cooperative, less that part disbursed for expenses of the cooperative, have been returned or paid to those entitled to them;
- (5) that no debt of the cooperative is unpaid;
- (6) that a majority of the incorporators elect to dissolve the cooperative. (§ 21(1) ch 93 SLA 1959)

Sec. 10.25.320. Dissolution of cooperative which has commenced business. A cooperative which has commenced business may be dissolved in the following manner.

- (1) The proposition to dissolve shall be submitted to the members of the cooperative at an annual or special meeting. The notice shall set forth the proposition.
- (2) At the meeting, the members shall approve, by the affirmative vote of not less than [a majority] two-thirds of all members of the cooperative, the proposition to dissolve the cooperative.
- (3) Upon approval, a certificate of election to dissolve, hereafter designated the "certificate," executed and acknowledged on behalf of the cooperative by its president or vice president under its seal, attested by its secretary, shall be submitted to the commissioner for filing together with an affidavit by the officer executing the certificate stating that the statements in the certificate are true. The certificate shall state the name of the cooperative, the address of its principal office, and that the members of the cooperative have voted to dissolve the cooperative. (§ 21(2) ch 93 SLA 1959)

### Sec. 10.25.330. Effect of certificate of dissolution.

(a) Upon the filing of the certificate and affidavit by the commissioner, the cooperative shall cease to carry on its business except to the extent necessary for the winding up of business. However, its corporate existence continues until articles of dissolution have been filed by the commissioner.

(b) A cooperative that does not file its articles of dissolution within two years after the date of filing the certificate mentioned in (a) of this section, shall be involuntarily dissolved by the commissioner. (§ 21(2) ch 93 SLA 1959; am § 51 ch 170 SLA 1976)

Sec. 10.25.340. Notice to creditors. The board of directors shall immediately have a notice of the dissolution proceedings mailed to each known creditor of and claimant against the cooperative and publish it once a week for two successive weeks in a newspaper of general circulation in the city or borough in which the principal office of the cooperative is located. (§ 21(2) ch 93 SLA 1959)

Sec. 10.25.350. Termination of cooperative affairs. The board of directors shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, and do all other things required to wind up its business. After paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, other than those to patrons arising by reason of their patronage, the directors shall distribute remaining sums, first, to patrons for the pro rata return of all amounts standing to their credit by reason of their patronage, and second, to members for the pro rata payment of membership fees. Sums then remaining shall be distributed among its members and former members in proportion to their patronage, except to the extent participation in the distribution has been legally waived. The board of directors shall thereupon authorize the execution of articles of dissolution. The president or vice president shall execute and acknowledge articles of dissolution on behalf of the cooperative and the secretary shall affix and attest to the seal. (§ 21(2) ch 93 SLA 1959)

Sec. 10.25.360. Contents of articles of dissolution.

(a) The articles of dissolution shall recite that they are executed under this chapter and shall state

- (1) the name of the cooperative;
- (2) the address of its principal office;
- (3) the date on which the certificate of election to dissolve was filed by the commissioner;
- (4) that there are no actions or suits against the cooperative;
- (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made for them;

(6) that the provisions of §§ 320 - 360 of this chapter have been complied with.

(b) The president or vice president executing the articles of dissolution shall make and annex to the articles an affidavit stating that the statements contained in the articles are true. (§ 21 (2) ch 93 SLA 1959)

#### Article 4. Miscellaneous Provisions.

Sec. 10.25.370. Filing of articles. Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and acknowledged and accompanied by the affidavits required by this chapter, shall be presented to the commissioner for filing. If the commissioner finds that the articles presented conform to the requirements of this chapter, he shall, upon the payment of the fees provided in this chapter, file the articles in the records of his office. Upon filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for is in effect. This section also applies to certificates of election to dissolve and affidavits executed under §§ 320 - 360 of this chapter. (§ 22 ch 93 SLA 1959)

Sec. 10.25.375. Cancellation of certificates issued and filings accepted. The commissioner may, within one year after a filing, and after written notice to the cooperative or individual making a filing, cancel a certificate issued or filing accepted under AS 10.25.010 - 10.25.650, on any ground existing at the time notice of cancellation is made for which the commissioner could have originally refused to issue the certificate or accept the filing. The notice of cancellation shall state the reason for the proposed cancellation. A cooperative or individual may request a hearing within 90 days after receipt of the notice. The notice of cancellation becomes final if the cooperative or individual does not request a hearing within 90 days after receipt of notice. Notice of cancellation must be sent by certified mail with return receipt requested. If the return receipt is not received by the department within a reasonable time and the department has made diligent inquiry as to the current address of the corporation, notice may be made by publication in a newspaper of general circulation in the vicinity of the registered office of the cooperative or the address of the individual who made the filing, and the cancellation becomes final 60 days after publication of the notice. (§ 68 ch 123 SLA 1980)

Sec. 10.25.380. Nonprofit operation. A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members and patrons. The bylaws of a cooperative or its contracts with members and patrons shall contain such provisions relating

to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character. (§ 23 ch 93 SLA 1959)

Sec. 10.25.390. Disposition of property to secure indebtedness. The board of directors of a cooperative may, without authorization by the members of the cooperative, authorize the execution and delivery of mortgages or deeds of trust of, or the pledging or encumbering of, the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues therefrom, upon the terms and conditions the board of directors determines, to secure an indebtedness of the cooperative. (§ 24(1) ch 93 SLA 1959; am § 1 ch 118 SLA 1970)

17 Sec. 10.25.400. Limitations on disposition of all the prop-  
erty. (a) A cooperative may not otherwise sell, lease or  
dispose of [all or a substantial portion of its property] more  
18(a) than fifteen percent (15%) of the cooperative's total assets,  
less depreciation, as reflected on the cooperative's books at the  
time of the trans-action unless the transaction is authorized by  
the affirmative vote of not less than [a majority] two-thirds of  
all the members of the cooperative. However, notwithstanding a  
provision of AS 10.25.010 - 10.25.650 or any other provision of  
law, the board of directors may, upon the authorization of a  
majority of those members of the cooperative [present at a  
meeting of the members,] voting thereupon in an election in which  
at least ten percent (10%) of the eligible members return  
ballots, sell, lease or otherwise dispose of all or a substantial  
18(b) portion of its property to another cooperative [or to the holder  
of its property to another cooperative or to the holder of an  
evidence of indebtedness issued to the United States of America  
or an agency or instrumentality of it] or to the state of Alaska.  
17 (§ 24(2) ch 93 SLA 1959; am § 2 ch 118 SLA 1970)

(b) Before a vote on authorization of disposition or sale of  
17 more than fifteen percent (15%) of the cooperative's property,  
the board of directors shall:

18(c) (1) have the property appraised by three appraisers  
chosen by the board and not associated with the cooperative or a  
proposed buyer of cooperative property, provided that the pro-  
posed buyer shall have advanced the cost of such appraisals to  
the cooperative;

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

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

(4) at least 30 days before the vote, mail to all members any alternative proposal made by another cooperative or any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members, together with any recommendation that the board has made, and place all such proposals on the ballot.

(c) This section does not apply to the transfer of cooperative property pursuant to AS 10.25.240 - .300.

Sec. 10.25.410. Nonliability of members for debts of cooperative. No member is liable or responsible for any debts of the cooperative and the property of the members is not subject to execution therefor. (§ 25 ch 93 SLA 1959)

Sec. 10.25.420. Effect of recordation of mortgages. A mortgage, deed of trust, or other instrument executed by a cooperative, which affects real and personal property and which is recorded in the real property records in the city, borough or other recording districts in which the property is located or is to be located has the same effect as if recorded, filed or indexed as provided by law in the proper office in the city, borough or other recording district as a mortgage of personal property. All after-acquired property of the cooperative described or referred to as being mortgaged or pledged in a mortgage, deed of trust or other instrument is subject to the lien thereof immediately upon the acquisition of such property by the cooperative, whether or not the property was in existence at the time of the execution of the mortgage, deed of trust or other instrument. Recordation of such mortgage, deed of trust or other instrument constitutes notice and has the same effect with respect to after-acquired property as it has under the laws relating to recordation of property owned by the cooperative at the time of the execution of the mortgage, deed of trust or other instrument and described in it or referred to as being mortgaged or pledged thereby. The lien of such mortgage, deed of trust or other instrument upon personal property after its recordation continues for the period of time specified in the instrument without refiling or the filing of a renewal certificate, affidavit or other supplemental information required by the laws relating to the renewal, maintenance or extension of liens upon personal property. (§ 26 ch 93 SLA 1959)

Sec. 10.25.430. Validity of mortgage under Rural Electrification Act of 1936. A mortgage made by a cooperative organized under this chapter to the United States of America, or any agency or instrumentality of it, to secure indebtedness incurred under the Rural Electrification Act of 1936, as amended, is not void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith for value because the mortgage is not accompanied by an affidavit of the parties to

it, or an affidavit of the agent or attorney in fact of a party to it, that the mortgage is made in good faith to secure the amount named, and without a design to hinder, delay or defraud creditors. A mortgage made by a cooperative organized under this chapter to the United States of America, or any agency or instrumentality of it to secure indebtedness incurred under the Rural Electrification Act of 1936, as amended, need not set forth the date upon which the indebtedness secured by it becomes due. (§ 26 ch 93 SLA 1959)

Sec. 10.25.440. Construction standards. Construction of electric lines and facilities, or telephone lines and facilities, by a cooperative shall, as a minimum requirement, comply with the standards of the National Electrical Safety Code in effect at the time of construction. (§ 27 ch 93 SLA 1959)

Sec. 10.25.450. Directors, officers or members as notaries. No person authorized to take acknowledgments under the laws of this state is disqualified from taking acknowledgments of instruments to which a cooperative is a party because he is an officer, director or member of the cooperative. (§ 28 ch 93 SLA 1959)

Sec. 10.25.460. Registered office and registered agent. Each cooperative shall have and continuously maintain in the state

- (1) a registered office which may be, but need not be, the same as the location of the principal office;
- (2) a registered agent who is an individual resident in the state and whose business office is identical with the registered office. (§ 29 ch 93 SLA 1959)

Sec. 10.25.470. Change of registered office or registered agent. A cooperative may change its registered office or change its registered agent, or both, upon filing in the office of the commissioner a statement setting forth

- (1) the name of the cooperative;
- (2) the address of its registered office;
- (3) if the address of its registered office is changed, the address of the new registered office;
- (4) the name of the registered agent;
- (5) if its registered agent is changed, the name of its new registered agent;
- (6) that the address of its registered office and the address of the business office and its registered agent, as changed, will be identical;
- (7) that such change was authorized by resolution adopted by its board of directors. (§ 30 ch 93 SLA 1959)

Sec. 10.25.480. Execution and filing of statement. The statement of change of office or agent shall be executed by the cooperative by its president or vice president, verified by him, and directed to the commissioner. If the commissioner finds that the statement conforms to this chapter, he shall file it in his office. Upon the filing, the change of address of the registered office, and the appointment of the registered agent, or both, as the case may be, is effective. (§ 30 ch 93 SLA 1959)

Sec. 10.25.490. Resignation of registered agent. A registered agent of a cooperative may resign by filing a written notice of resignation, executed in duplicate, with the commissioner. The commissioner shall immediately mail a copy of it to the cooperative at its registered office. The appointment of the agent terminates 30 days after receipt of the notice by the commissioner. (§ 30 ch 93 SLA 1959)

Sec. 10.25.500. Service of process on cooperative. (a) The registered agent of a cooperative is an agent of the cooperative upon whom process, notice or demand required or permitted by law to be served upon the cooperative may be served.

(b) When a cooperative fails to appoint or maintain a registered agent in the state, or when its registered agent cannot with reasonable diligence be found at the registered office, then the commissioner is an agent of the cooperative upon whom process, notice or demand may be served. (§ 31 ch 93 SLA 1959)

Sec. 10.25.510. Manner of service on commissioner. (a) Service on the commissioner is made by delivering to and leaving with him, or with a clerk having charge of the corporation department of his office, duplicate copies of the process, notice or demand. The commissioner shall immediately have one copy forwarded by registered mail, addressed to the cooperative at its registered office. Service on the commissioner is returnable in not less than 30 days.

(b) The commissioner shall keep a record of each process, notice and demand served upon him under this section, and shall record the time of service and his action with reference to it. (§ 31 ch 93 SLA 1959)

Sec. 10.25.520. Other means of service not affected. Nothing in §§ 500 and 510 of this chapter limits or affects the right to serve process, notice or demand required or permitted by law to be served on a cooperative in any other manner permitted by law. (§ 31 ch 93 SLA 1959)

Sec. 10.25.530. Fees. (a) The commissioner shall establish by regulation subject to AS 10.05.773, charge and collect filing fees for

- (1) filing articles of incorporation;
- (2) filing articles of amendment;
- (3) filing articles of consolidation or merger;
- (4) filing articles of conversion;
- (5) filing certificate of election to dissolve;
- (6) filing articles of dissolution;
- (7) filing certificate of change of principal office and designation or change of registered office and registered agent; and

(8) acting as agent for service of process.

(b) The department may by regulation charge each cooperative subject to AS 10.25.010 - 10.25.650 a fixed fee in place of the various fees specified in AS 10.25.010 - 10.25.650, with the exception (a)(1) of this section, and for the routine administrative services rendered to the corporation by the department. An increase in the fixed fee charged under this subsection is subject to AS 10.05.773. (§ 32 ch 93 SLA 1959; am § 52 ch 170 SLA 1976; am § 69 ch 123 SLA 1980)

Sec. 10.25.540. Taxation of cooperatives. (a) Cooperatives under AS 10.25.010 - 10.25.650 shall apply for a business license and pay the initial license fee as provided by the Alaska Business License Act (AS 43.70.020 - 43.70.120), as amended.

(b) Before March 1 of each year,

(1) each telephone cooperative shall pay to the state, instead of state and local ad valorem, income and excise taxes which may be assessed or levied, a percentage of its gross revenue earned during the preceding calendar year;

(2) each electric cooperative shall pay to the state, instead of state and local ad valorem, income and excise taxes which may be assessed or levied, a tax on the number of kilowatt hours of electricity sold at retail by the cooperative during the preceding calendar year. (§ 33 ch 93 SLA 1959; am § 1 ch 66 SLA 1960; am § 1 ch 74 SLA 1980)

Sec. 10.25.550. Amount of telephone cooperative gross revenue tax. The telephone cooperative gross revenue tax shall be computed as follows:

(1) one percent of gross revenue for cooperatives which have furnished telephone service to consumers for less than five years as of December 31 of the preceding calendar year;

(2) two percent of gross revenue for cooperatives which have furnished telephone service to consumers for five years or longer as of December 31 of the preceding calendar year. (§ 33 ch 93 SLA 1959; am § 1 ch 66 SLA 1960; am § 2 ch 74 SLA 1980)

Sec. 10.25.555. Amount of electric cooperative tax. (a) The electric cooperative tax shall be computed as follows:

(1) one-fourth mill per kilowatt hour for cooperatives which have furnished electric energy and power to consumers for less than five years as of December 31 of the preceding calendar year;

(2) one-half mill per kilowatt hour for cooperatives which have furnished electric energy and power to consumers for five years or longer as of December 31 of the preceding calendar year.

(b) In this section, "mill" means one-tenth of one cent.  
(§ 3 ch 74 SLA 1980)

Sec. 10.25.560. Manner of computing telephone cooperative gross revenue. Gross revenue of a telephone cooperative includes all revenues earned from local and toll services. (§ 33 ch 93 SLA 1959; am § 4 ch 74 SLA 1980)

Sec. 10.25.570. Refund to local governments. The proceeds of the telephone cooperative gross revenue tax and the electric cooperative tax, less the amount expended by the state in their collection, shall be refunded to an organized borough or a city of any class incorporated under state law, in the proportion that the revenue was earned within the city or the borough area outside the city. However, taxes collected on gross revenue earned by a telephone cooperative or on the sale of electricity by an electric cooperative outside a city or organized borough shall be retained by the state and deposited into its general fund. (§ 33 ch 93 SLA 1959; am § 1 ch 241 SLA 1970; am § 5 ch 74 SLA 1980)

Sec. 10.25.580. Inventory and fixtures subject to taxation. The inventory and fixtures of a business operated by a cooperative incidental to the furnishing of central station electric service, including, without limitation, appliance stores or departments, is not exempt from ad valorem taxes. The inventory and accounts of these businesses shall be separately maintained and taxes shall be paid upon them as provided by law. (§ 33 ch 93 SLA 1959)

Sec. 10.25.590. Connection and interconnection of facilities. A telephone cooperative organized or doing business under this chapter, hereafter designated as applicant, may require a person furnishing telephone service to the public in the state, hereafter designated as company, to interconnect its lines, facilities or systems with, or otherwise make available the lines, facilities or systems to, the applicant's telephone lines, facilities or systems, in order to provide a continuous line of communication for the applicant's subscribers. If the company and the applicant are unable to agree upon the terms and

conditions of interconnection, including compensation, the superior court shall, upon petition of the parties, or either of them, establish the terms and conditions. The terms and conditions shall be reasonable and nondiscriminatory. (§ 34 ch 93 SLA 1959)

Sec. 10.25.600. Correction of defectively organized cooperatives. If a cooperative has filed defective articles of incorporation, or has failed to do all things necessary to perfect its corporate organization, it may file corrected articles of incorporation, or amend the original articles, and do and perform all acts and things necessary for the correction of the defects. The action so taken is valid and binding upon all persons concerned. The capacity of the cooperative to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary, may not be questioned. (§ 37 ch 93 SLA 1959)

#### Article 5. General Provisions.

Sec. 10.25.610. Purpose. Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of supplying electric energy or telephone service and promoting and extending the use of these services. (§ 2 ch 93 SLA 1959)

Sec. 10.25.620. Chapter extended to existing cooperatives.

Sec. 10.25.630. Construction of chapter. This chapter is complete in itself and is controlling. The provisions of any other law of the state relating to the organization of a corporation, except as provided in this chapter, do not apply to a cooperative organized under this chapter. The enumeration of an object, purpose, power, manner, method or thing does not exclude like or similar objects, purposes, powers, manners, methods or things. (§ 35 ch 93 SLA 1959)

Sec. 10.25.640. Definitions. As used in AS 10.25.010 - 10.25.650

(1) "commissioner" means the commissioner of commerce and economic development;

(2) "cooperative" means a corporation organized under AS 10.25.010 - 10.25.650 or which becomes subject to AS 10.25.010 - 10.25.650 in the manner provided in AS 10.25.010 - 10.25.650;

(3) "person" means a natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision, or an agency of the state or political subdivision, or a body politic;

(4) "telephone service" means communication service whereby voice communication through the use of electricity is the principal intended use, and includes all telephone lines, facilities or systems used in the rendition of this service.

(5) "related telecommunications service" means telecommunications service where there is the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force variations, or impulses, whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 3 ch 93 SLA 1959; am § 10 ch 64 SLA 1959; am § 2 ch 1 SLA 1961; am § 72 ch 218 SLA 1976; am § 5 ch 136 SLA 1982)

Sec. 10.25.650. Short title. This chapter may be cited as the Electric and Telephone Cooperative Act. (§ 1 ch 93 SLA 1959)



# ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301  
ANCHORAGE, ALASKA 99503 • (907) 276-3235

February 25, 1988

Mr. Jeff Bohman, Executive Director  
Alaska Public Interest Research Group  
P.O. Box 10-1093  
Anchorage, AK 99510

Dear Jeff:

This is in response to your comments on HB 394 dated February 22, 1988.

First, we have never said that the purpose of this legislation is to deal with "mergers, dissolutions, consolidations, etc." You may have received that impression from a newspaper story. That was the focus of the news report, apparently because the reporter saw this as the one provision with the most potential for controversy. What we have said is the purpose of this bill is to amend the electric and telephone cooperative act "to clear up ambiguities, to permit cooperatives to operate efficiently, and to assure proper control of the cooperatives by the members."

We have no hidden agenda. If you could suggest an amendment which would narrow the scope of the title to prevent the addition of items to this bill which are not germane to AS 10.25, we would be delighted to endorse that amendment.

Section 1. The law is presently silent on whether cooperative utilities can make contributions for public purposes as would be authorized by this section. All cooperatives are frequently asked to make such contributions. Most cooperative boards have decided to make contributions. Some coop boards, on the advice of counsel, have decided that they do not have the authority to do so. Our principal purpose in proposing this kind of amendment is simply to get the law stated clearly as to what a cooperative can or cannot do in regard to contributions. The proposed standard is lifted verbatim from the law governing all other types of cooperatives in this state (AS 10.25.010 (12)).

Section 10. The proposed deletion of language in this section is purely for the purpose of eliminating surplus language which causes confusion. Most electric cooperatives - all of the larger ones -

now provide for voting by mail for election of directors. The old language in Section 10 being deleted implies that the election has to take place at a meeting.

If a cooperative does not have mail balloting and a quorum is not present at an annual meeting, the procedure is to adjourn the meeting to a later date rather than calling a special meeting. This procedure is provided for in AS 10.25.110 and is not proposed for amendment.

The amendment in Section 10 does not eliminate the right to recall directors. To make that right completely clear, the House Labor and Commerce subcommittee amended Section 8 (page 6, line 6) to provide that coop bylaws shall provide for the right of recall. We support that amendment.

Section 13. The subcommittee amended this section to remove the language on page 9, line 1 at our request. With that change, every item specifically listed as a subject which a cooperative board may discuss in executive session was believed to be included in the general provisions of AS 10.25.175 (c) when that section was enacted in 1980. Recent court decisions on similar provisions in AS 44.62.310 have cast doubt on that belief, so we ask that these items be listed specifically. When you look at this list of specific subjects, surely you cannot have any serious belief that they are not appropriate subjects for discussion in executive session. Any action taken on these subjects would still have to be done in open session.

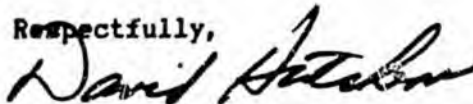
Electric and telephone cooperatives are corporations, not government entities, so it is necessary to deal with open meetings for cooperatives in AS 10.25 rather than applying AS 44.62.310 which covers public bodies. It would not be appropriate to apply that section to cooperatives by reference as you suggest because in a cooperative it is the "membership" not the "public" which should have a right to attend and be informed.

Section 14. You understand this section the same way we do. A court could void an action if it determined that to be the appropriate remedy, it is just that avoidance would not be automatic.

Section 15. We understand this section to be narrow in its scope. Only those subjects which are appropriate for discussion in executive session can be withheld from inspection by a member.

If you have any further questions or comments regarding this legislation, we would be pleased to discuss them with you.

Respectfully,



David Hutchens



# NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99633 • PHONE (907) 246-4261

MAR 1988

February 26, 1988

John Sund, Representative  
Alaska State Legislature  
PO Box V (MS 3100)  
Juneau, AK 99811

Dear Representative Sund:

As Representatives for Naknek Electric Association, Inc. (N.E.A.), we are jointly sending this correspondence to ask for your support concerning HB 394, which will be before you for consideration.

The proposed bill will modify the existing language of The Electric and Telephone Cooperative Act (AS 10.25) in an effort to meet the changes that have occurred in the utility industry since the Act was adopted in 1959.

Although we support all of the proposed amendments, two items of particular concern have prompted this writing.

Of foremost concern to N.E.A. and the other Cooperatives in Alaska are the proposed changes to Article 3 of the Statute. The most significant change here would be the increase in the vote required to sell a Cooperative from a simple majority to a two-thirds majority. We feel, that since the vote to sell or dissolve a Cooperative is the most important decision that the members can make, that this decision should be based on an overwhelming majority of the member/owners.

As you may be aware, N.E.A. along with many of the other Certificated Electric Utilities in Alaska, have been contacted for potential buy-out offers, (See attached copy of letter dated October 12, 1987 from ERA Realty). This prompts us to pursue the above referenced amendment. Those of us directly involved with the Cooperative Systems believe that local ownership and leadership is still the best way to operate a utility company.

N.E.A. is also very interested in the proposed amendment to Section 10.25.020, Powers of an Electric Cooperative.


The section relating to authorizing waste heat distribution systems as a Cooperative function is most important to N.E.A. In the past, the legislature has encouraged the use of waste heating, but unfortunately the Cooperatives have had no clear authority to engage in that business. This modification would allow the Cooperatives this opportunity. N.E.A. has in place, an operating waste heating system that provides heating service to 83,837 square feet of residential and commercial buildings. We believe that this service provides a benefit to our consumers at a substantial savings of money and natural resources. For these reasons, we believe the Cooperatives should statutorily be permitted to engage in this business.

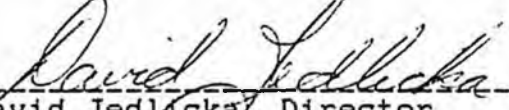
We thank you for your time, and any consideration that may be given to this important Legislation will be appreciated by our consumers.


Sincerely,

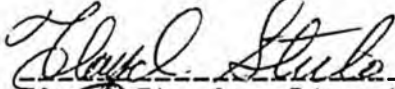
  
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Mike Swain, President

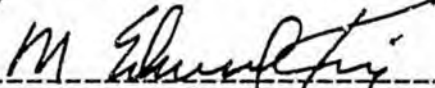
  
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Dale Peters, Director

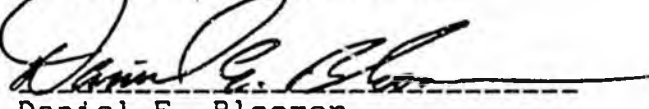
  
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Edwin Anderson, Vice-President

  
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David Jedlicka, Director

  
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John C. Knutsen, Sec/Treasurer

  
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Floyd Steele, Director

  
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M. Edward King, Director

  
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Daniel E. Bloomer,  
General Manager

cc: David Hutchens, ARECA  
Roger Kempel, N.E.A. Attorney

## Electricity co-ops want hostile-takeover protection

The Associated Press

JUNEAU — The non-profit utility cooperatives that provide many Alaskans with electric power are seeking safeguards against hostile takeovers by profitable companies.

A bill supported by the Alaska Rural Electric Cooperative Association and introduced in both houses of the

legislature would increase the vote needed to sell or disband a utility from half the members to two-thirds.

"We as a co-op organization are not trying to keep a co-op from selling if it's the opinion of the vast majority of the membership that they should sell," says Ken Johnson, information director for the association.

"If you have 2,500 members and 1,251 vote to sell and 1,249 vote not to, is that clear enough to go and sell? We think the margin should be substantially greater," Johnson said Thursday.

There's no immediate threat of utility takeovers in Alaska, Johnson said.

But there is increasing con-

cern about them in the Lower 48, he said, and as Alaska co-ops improve their financial footing they might become attractive to utilities looking to expand. Growing companies in other states have, in essence, bought out some co-ops by offering members money for giving up their shares of a co-op's equity, he said.

# LEGISLATURE '88

JUNEAU EMPIRE

FRIDAY, JANUARY 29, 1988 3

## Non-profit utility co-ops seek protection from takeovers

By SUE CROSS

THE ASSOCIATED PRESS

The non-profit utility cooperatives that provide many Alaskans with electric power are seeking safeguards against hostile takeovers by profitable companies.

A bill supported by the Alaska Rural Electric Cooperative Association and introduced in both houses of the legislature would increase the vote needed to sell or disband a utility, from half the members to two-thirds.

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attractive to utilities looking to expand. Growing companies in other states have, in essence, bought out some co-ops by offering members money for giving up their shares of a co-op's equity, he said.

Alaska utilities are just beginning to consider the issue because they're becoming financially attractive for the first time after a long period of development, Johnson said.

During the 1970s and early 1980s, demand for electricity was booming with the population and utility co-ops were borrowing as fast as they could — often at high interest rates — to meet the need.

The large debts and high start-up costs left the co-ops with little equity that another corporation would want to acquire.

Since then the loans have been refinanced at lower interest, they're being paid off and Alaska utilities are building value, he said.

The association represents all but two of Alaska's 17 electric cooperatives, the Barrow and Middle Kuskokwim co-ops. About 70 percent of Alaska electric consumers are members of the co-ops, Johnson said.

The co-op bills (SB300 and HB394) also would affect telephone cooperatives.

Other than the proposed voting change, most of the measure's provisions would simply clarify co-ops' current practices by putting them in statute, Johnson said.

Utilities want it stated in law that they can donate money to charities or educational groups — as some do now — and that members can vote by mail as well as voting in person at co-op meetings.

Most of the larger co-ops already allow mail ballots because they don't have room to house a meeting of half their members and to increase the voting rate, Johnson said.

Other provisions of the bill would:

- Allow co-ops to run a waste heat distribution system;
- Require membership as a condition of getting service from a co-op;
- Increase the notice time for a public meeting from no more than 40 days to 120 days;
- Allow co-ops to insure their officers and directors against liability connected to their service;
- Clarify open-meetings requirements to allow executive sessions — which are closed — when discussing labor and personnel matters; litigation; a member's finances; bids, trade secrets or confidential commercial information.