

HB

394



**ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.**

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

May 7, 1988

Dear Senator Kelly:

This letter is to ask you to please support passage of Senate CS for HB 394 (L&C). This bill amends the Electric and Telephone Cooperative Act (AS 10.25), and it deals with us only in our corporate capacity as cooperatives. All Alaska statutes that deal with our business as utilities are found in AS 42.05 and are not affected by this bill.

Attached is an explanation of the provisions of Senate CS for HB 394 (L&C) organized by subject area. If you or your staff have questions, please give me a call at 463-4982.

Sincerely,


David Hutchens

Senate CSHB 394 (L&C)
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The Electric and Telephone Cooperative Act was originally enacted in 1959 as a variation of the model state legislation recommended by the Rural Electrification Administration (REA), a unit within the U.S. Department of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 HB 394 was prepared.

Mail Voting

One kind of change which appears in numerous locations throughout this bill 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." This bill 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. 7, 20, 21, 22). 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 this bill, a two-thirds majority of those voting is required which must also be a majority of all members. Present law requires a majority vote of all members.

Protection of Labor Contracts

Sec. 18 and subsection 22(d) were added at the request of the IBEW to provide if a cooperative is merged into another or is sold, the existing labor contracts must be honored by the new owners.

Powers of Cooperatives

The authority to make contributions for various public purposes (Sec. 2) 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.

Sec. 3 prohibits cooperatives from using coop funds to support or oppose a candidate for director.

Electric cooperatives would also be authorized to operate waste heat distribution systems (Sec. 4). 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 heat distribution 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. 6) 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. 6) 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. 7) is necessary to give adequate time for the informational processes established in Section 22 to be used when a special meeting is called to sell a cooperative. Sec. 7 also expands the notice period for the annual meeting from 70 to 40 days to 15 to 60 days to make sure the notice contained in the Ruralite magazine can be delivered within the required time period.

Record Date

Establishing a record date for the right to participate in membership meetings (Sec. 9) 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 Sec. 10 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 and for necessary travel days to and from such meetings, not just attendance at formal meetings of the board.

Liability, Indemnification, and Insurance

The new language contained in Sec. 11 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 nonprofit corporations, public hospitals, public schools, and municipalities (AS 9.17.050). SB 343 provides similar limitations on individual liability for directors of business corporations, the rest of the nonprofit corporations, and all other kinds of cooperatives.

Board Meetings

Board meetings could be conducted by teleconference (Sec. 14). A similar provision is made for boards of business corporations (AS 10.05.199 (a)).

The penalty for violations of the meetings statute is rewritten in Sec. 15 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 utility if action on a major item like a power supply contract were voided.

Examination of Records

Information which was prepared during or for use in an executive session would be protected in written form (Sec. 16). For example, it does no good to go into executive session to discuss an attorney's briefing paper on a pending lawsuit if that paper itself is available for inspection.

Limitations on Sale of Property

In addition to requiring a two-thirds majority of those voting, which must also be a majority of all members, to sell a cooperative as discussed earlier, Section 21 clarifies the law on exactly which sales of coop property must be referred to a vote of the members.

Sec. 22 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.

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 and on March 31, 1988 the GHEA members voted to sell their cooperative to AEL&P. The rules regarding that transaction should not be changed when it is so near completion. Sec. 23 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.

Sec. 24 repeals 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 was not used in the sale of GHEA to AEL&P. This section serves no purpose, and we ask that it be repealed.

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.

CSHB 394 (Judiciary)
Amendments to Electric and Telephone
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Comments from Alaska Rural Electric
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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.

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Sec. 24 repeals 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 was not used in the sale of GHEA to AEL&P. This section serves no purpose, and we ask that it be repealed.

Comparison of SB 369 with CS HB 394 (Judiciary)

SB 369

HB 394

Sec. 1. Amends powers of cooperatives to authorize donations.

Sec. 1. Amends AS 10.05 to conform to repeal of AS 10.25.245.

Sec. 2. Same.

Sec. 2. Authorizes electric cooperatives to operate waste heat or existing district heat systems.

Sec. 3. Prohibits use of cooperative funds to promote or oppose candidates for director.

Sec. 4. Same.

Sec. 3. Amendment to bylaws provision to make it clear that elections may be conducted by mail.

Sec. 5. Same.

Sec. 4. Permits coop to require membership as condition of service and to terminate membership through process contained in bylaws.

Sec. 6. Same.

Sec. 5. Special meetings of membership require notice of 90 to 120 days.

Sec. 7. Same on special meetings. Annual meeting notice changed from 20 to 40 days to 15 to 60 days.

Sec. 6. Clarification of language on voting to permit mail voting but not proxy voting.

Sec. 8. Same.

Sec. 7. Authorizes coop to set a record date for participation in elections.

Sec. 9. Same except that record date cannot be more than 30 days in advance of meeting or election.

Sec. 8. Authorizes director compensation for each day of attendance at meetings. Recall of directors to be for cause.

Sec. 10. Same except that it clarifies language and adds necessary travel days to attend meetings. It also requires coops to have procedure for recall of directors for cause.

Sec. 9. Provides for limitation of personal liability of directors, permits coop to indemnify directors and purchase insurance.

Sec. 11. Same.

Sec. 10. Eliminates surplus language to achieve clarity.

Sec. 12. Same.

Sec. 11. Clarification for use of mail voting.

Sec. 13. Same.

Sec. 12. Authorizes board meetings to be conducted by teleconference.

Sec. 14. Same except that it assures right of member to attend and listen.

Sec. 13. Lists specific topics which may be discussed by board in executive session.

Sec. 14. Give court authority to order appropriate relief for violations of open meeting act rather than all action automatically being void.

Sec. 15. Same.

Sec. 15. Cooperatives may withhold books and records on subjects discussed in executive session.

Sec. 16. Cooperatives may withhold books and records that were prepared for or during discussion in an executive session, and may withhold identity of public records discussed in executive session.

Sec. 16. Election for merger of cooperatives may be conducted by mail.

Sec. 17. Same.

unless

Sec. 18. Cooperatives may not merge surviving cooperative complies with existing labor contracts.

Sec. 17. Election for consolidation of cooperatives may be conducted by mail.

Sec. 19. Same.

Sec. 18. Election for dissolution of cooperative may be conducted by mail and a two-thirds vote of all members is required.

Sec. 20. Same except that vote is two-thirds of those voting which must also be a majority of all members.

Sec.19. Election for sale of 15 percent or more of cooperative property may be conducted by mail and a two-thirds vote of all members is required.

Sec.20. Before election to sell 15 percent or more of cooperative property, there must be appraisals, notice to members, notice to other cooperatives, and competing proposals must be submitted to members.

Sec.21. Immediate effective date.

Sec.21. Same except that vote is two-thirds of those voting which must also be a majority of all members.

Sec.22. Same except that language on appraisals is refined and a provision is added which requires purchaser to comply with existing labor contracts.

Sec.23. Sales of cooperative property approved by the members before the effective date of this act are not effected by this act.

Sec.24. Repeals AS 10.25.245 which authorizes mergers of coops with business corporations.

Sec.25. Same.

*Amendments to Electric and Telephone
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*Comments from Alaska Rural Electric
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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

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Electric cooperatives would also be authorized to operate waste heat distribution systems (Sec. 2). Since 1960, 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 par 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.

Will this
give them
enough
time to
formalize the
sale?

Glacier Highway Electric Association Inc.



P. O. Box 210547 • Auke Bay, Alaska 99821 • Phone (907) 789-7344

February 4, 1988

David Hutchens, Executive Director
Alaska Rural Electric Cooperative Association, Inc.
237 E. Fireweed Lane, Suite 301
Anchorage, Alaska 99503

Re: HB 394/SB 369

Dave,

At our urging AS 10.25 was amended in 1980 to add a section 10.25.245 which would permit the merger of a cooperative with a business corporation. At the time we hoped to merge with Juneau's principal electric utility, the Alaska Electric Light and Power Company. As events turned out, our merger effort failed. Therefore, we have no objection to section 10.25.245 being rescinded.

Over the past two years we have been negotiating an asset purchase agreement with AELP where AELP will purchase all of the assets of our cooperative. We have reached an agreement and expect this effort to succeed; however, it will take some time to be approved by our members, lenders and various government agencies including the Alaska Public Utilities Commission. We ask that our continuing efforts to consolidate Juneau's electric utilities be exempted from the proposed changes of HB 394/SB 369 for 10.25 provisions governing the sale of a cooperative's assets and the dissolution of a cooperative.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Charles Y. Walls', is written over a faint, larger version of the same signature.

Charles Y. Walls, General Manager
Glacier Highway Electric Association, Inc.

cc: W.A. Corbus, AELP

Re: Dave Hutchens proposed legislation.

Sections 1 & 2 expands the areas of operation for electric co-ops. It appears to be geared toward a gas pipeline and gas heat production and distribution system.

Sections 3 - 21 are operational changes for electric and telephone co-ops. Sections 3,4,6,7,8,10,11, 16, 17, & 18 are generally housekeeping changes.

Sec. 1 allows the co-ops to:

- * get into the fuel production & transportation business
- * joint venture with other co-ops, corporations, the State and its political subdivisions
- * make charitable donations.

Sec. 2 allows the co-ops to:

- * get into the heating business
- * participate in economic development activities.

Sec. 5 requires 90 - 120 days notice for special meetings.

Sec. 9 limits the liabilities of the directors, employees, etc. and allows the co-ops to buy insurance on their behalf.

Sec. 12 allows board meetings by teleconference.

Sec. 13 adds items to the list of what can be discussed in executive session.

Sec. 14 allows members that are affected by this section to sue and receive relief.

Sec. 15 allows co-ops to withhold information that may be discussed at executive sessions.

Sec. 19 changes the required vote needed to dissolve a cooperative from a simple majority to 2/3.

Sec. 20 deals with disposition of cooperative assets. Current language says "when disposing of all or a substantial portion". The proposed wording is "more than 15%". Currently a majority vote of the members is required. The proposal requires 2/3. Currently the board may dispose of assets to the U.S. government. The new language changes this to the State gov't.

Sec. 21 requires that before disposal of assets the board must; 1) have 3 appraisals 2) give 90 days notice to all members. 3) give 90 days notice to all co-ops in Alaska. 4) give 30 days notice to members of all alternative proposals.

Sec. 22 is an immediate effective date.

5-1695P
Cramer
5/5/88

Original sponsor: Labor and Commerce
Committee

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

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

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

Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.
Except as provided in (b) of this section, an [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, 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

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. AE 10.25.070 is amended to read:

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

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

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

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

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

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

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

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

- 1 • Sec. 7. AS 10.25.100 is amended to read:

2 Sec. 10.25.100. NOTICE OF MEETINGS. Except as otherwise pro-
3 vided in this chapter, written notice stating the time and place of
4 each meeting of the members or district delegates [AND, IN THE CASE OF
5 A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH THE MEETING IS
6 CALLED,] shall be given to each member or district delegate, either
7 personally or by mail, not less than 15 [20] days or [NOR] more than
8 60 [40] days before the date of the meeting. Notice of a special
9 meeting of the members, together with notice of the purpose for which
10 the meeting is called, shall be given to each member or district
11 delegate, either personally or by mail, not less than 90 days or more
12 than 120 days before the date of the meeting. If mailed, notice is
13 considered given when it is deposited in the United States mail with
14 postage prepaid addressed to the member or district delegate at the
15 address of the member or delegate as it appears on the records of the
16 cooperative.

- 17 • Sec. 8. AS 10.25.120 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

22 (d) In this section

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

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

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

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

1 or agent of a cooperative.

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

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

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

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

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

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

1 of the board participates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROF-
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; if a buyer other than the first proposed buyer purchases

1 the assets based on the appraisals, the actual buyer shall reimburse
2 the first proposed buyer for the cost of the appraisals;

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

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

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

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

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

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

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

27 * Sec. 24. AS 10.25.245 is repealed.

28 * Sec. 25. This Act takes effect immediately under AS 01.10.070(c).
29

STANDORISE WANTS EXPLANATION
OF WHY FOR EACH CHANGE.

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 369

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 * Section 1. AS 10.25.010 is amended to read:

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

11 A electric or telephone cooperative may

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

13 (2) have perpetual existence;

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

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

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

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

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

6 (8) exercise the power of eminent domain;

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

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

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

12 (12) make all contracts necessary, convenient, or appropri-

13 ate for the full exercise of its powers;

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

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

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

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

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

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

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

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

15 (4) operate a waste heat distribution system;

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

18 * Sec. 3. AS 10.2'.070 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Sec. 10.25.145. LIABILITY, INDEMNIFICATION, AND INSURANCE. (a)
19 A protected person is not individually liable for conduct performed
20 within the scope of the person's duties for the cooperative. However,
21 the protected person may be held individually liable for conduct if it
22 was not reasonable for the person to believe that the conduct was in,
23 or not contrary to, the best interests of the cooperative.

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

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

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

10 (d) In this section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) labor negotiations and personnel matters;

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

1 the articles of incorporation, or the bylaws;

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

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

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

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

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

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

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

21 Sec. 10.25.240. MERGER. One or more cooperatives, each [HERE-
22 INAFTER] designated in this section as "merging cooperative," may
23 merge into another cooperative, [HEREINAFTER] designated in this
24 section as "surviving cooperative," by complying with the following
requirements.

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

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

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

10 * Sec. 17. AS 10.25.260 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) This section does not apply to the transfer of cooperative
2 property under AS 10.25.240 - 10.25.300.
3 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

R

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April 21, 1988

MEMORANDUM

TO: Representative John Sund

ATTN: John Hartle

FROM: Ginny Fay *GF*
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
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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