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TELECONFERENCE PARTICIPATION

SPONSOR Sen L+C

DATE/TIME 2-8 3:30

SUBJECT SB 369

LIO'S

(moderator)

	TESTIFY	OBSERVE	TESTIFY	OBSERVE
ANCHORAGE ( )			PETERSBERG * ( )	
BARROW * ( )			SITKA ( )	
BETHEL ( )			SOLDOTNA ( )	
DELTA JUNCTION * ( )			VALDEZ * ( )	
DILLINGHAM * ( )	<i>Expecting Jeri Nelson of Nushagak Elec &amp; Tele</i>		LTC'S	
FAIRBANKS ( )			HOMER	
GLENNALLEN * ( )			WRANGELL	
JUNEAU ( )			OFFNETS	
KETCHIKAN ( )			OFF1 <i>Anchorage</i>	<i>Tom Staudenmaier</i>
KODIAK ( )			OFF2	
KOTZEBUE ( )			OFF3	
MAT-SU ( )			OFF4	
NONE ( )			OFF5	
			OFF6	

WTS'S ON BACK

\* SESSION ONLY

VTS'S	W	U	O	TOTAL		W	U	O	TOTAL
AMB - AMBLER					MET - METLAKATLA				
ANA - ANAKTUVUK PASS					MOS - MOSQUITO LAKE				
AND - ANDERSON					NAK - NAKNEK				
ANG - ANGOON					NEN - NENANA				
CAN - CANTWELL					NEW - NEWHALEN				
CHS - CHISTOCHINA					NIK - NIKISKI				
CHI - CHITINA					NOR - NOORVIK				
COP - COPPER CENTER					NOT - NORTH TONSINA				
COR - CORDOVA					NOW - NORTHWAY				
CRA - CRAIG					PEL - PELICAN				
DOT - DOT LAKE					PTH - POINT HOPE				
EAG - EAGLE					SAV - SAVOONGA				
FTY - FT. YUKON					SDP - SAND POINT				
GAK - GAKONA					SEW - SEWARD				
GAL - GALENA					SLW - SELAWIK				
GAM - GAMBELL					SHS - SHISHMAREF				
HNS - HAINES					SLA - SLANA				
HEA - HEALY					SKG - SKAGWAY				
HOO - HOONAH					STP - ST. PAUL				
HPB - HOOPER BAY					TOG - TOGIAK				
HYD - HYDABURG					TOK - TOK				
KAK - KAKE					OOK - TOOKSOOK				
KAT - KAKTOVIK					UAK - UNALASKA				
KEN - KENNY LAKE					UNK - UNALAKLEET				
KLA - KLAWOCK					WAI - WAINWRIGHT				
MEN - MENTASTA					YAK - YAKUTAT				

WORK DRAFT

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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. 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  
purpose, the board of directors may fix a date that occurs

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

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

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

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

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

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

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

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

22           (d) In this section

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

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

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

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

1 or agent of a cooperative.

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

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

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

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

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

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

1 of the board participates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) have the tangible and intangible property that is  
25 proposed for sale appraised by three appraisers; the appraisers shall  
26 be chosen by the board and may not be associated with the cooperative  
27 or a proposed buyer of cooperative property; the first proposed buyer  
28 shall advance to the cooperative money sufficient to pay for the  
29 appraisals; 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 - 10.25.370.

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

CSHB 394 (Judiciary)  
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.

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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 20 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.

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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).

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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 . . . 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.

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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.

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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  
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 unananimously 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 require 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.

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*H. L & C Subcommittee Mark R. ...*

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

HOUSE BILL NO. 394

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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

11 An electric or telephone cooperative may

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

13 (2) have perpetual existence;

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

15 (4) construct, buy, lease, or otherwise acquire, and equip,

16 maintain, and operate, and sell, assign, convey, lease, mortgage,

17 pledge, or otherwise dispose of or encumber lands, buildings, struc-

18 tures, electric or telephone lines or systems, dams, plants and equip-

19 ment, and any other real or personal property, tangible or intangible,

20 which is necessary, convenient, or appropriate to accomplish the

21 purpose for which the cooperative is organized;

22 (5) buy, lease, or otherwise acquire, and use, and exercise

23 and sell, assign, convey, mortgage, pledge or otherwise dispose of or

24 encumber franchises, rights, privileges, licenses, and easements;

25 (6) borrow money and otherwise contract indebtedness, and

26 issue evidences of indebtedness, and secure the payment of the indebt-

27 edness by mortgage, pledge, or deed of trust of, or any other encum-

28 brance upon its real or personal property, assets, franchises, or

29 revenues;

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

6           (8) exercise the power of eminent domain;

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

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

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

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

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

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

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

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

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

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

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

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

15 (4) operate a waste heat distribution system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Sec. 10.25.125. RECORD DATE. To determine the members entitled  
18 to notice of a meeting of the members or to vote on a matter that is  
19 to be submitted to a vote of the members, or for any other proper  
20 purpose, the board of directors may fix in advance a date as the  
21 record date for the determination, *which may not be more than 90 days in advance of* If a record date is not fixed for *the*  
22 the determination of members entitled to notice of a meeting or to *date of*  
23 vote on a matter, the date on which notice of the meeting or of mail *notice*  
24 voting is first mailed is the record date. When a determination of *for the*  
25 members entitled to vote at a meeting is made, the determination *meeting.*  
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)~~<sup>SHALL</sup> 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 <sup>or other</sup> ~~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 <sup>SEAL</sup>  
3 (6) bids, trade secrets, or other confidential commercial  
4 information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 *all the real and personal*  
(1) have <sup>A</sup> the property appraised by three appraisers chosen  
12 by the board and not associated with the cooperative or a proposed  
13 buyer of cooperative property; the first proposed buyer shall advance  
14 to the cooperative money sufficient to pay for the appraisals;

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

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

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

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

29 (c) This section does not apply to the transfer of cooperative

1 property under AS 10.25.240 - 10.25.300.

2 \* Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

Sec. 21. Transition Provision. The sale of any cooperative property which is approved by AS 10.25.400 which is approved by a vote of the members before the effective date of this act will be effective even if the transaction is not completed by the effective date.

Sec. 22. AS 10.25.245 is repealed.

PROPOSED AMENDMENTS TO SB 369

PRESENTED BY ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION

PAGE 6, LINE 12 -- DELETE "AND AT A", REPLACE WITH "OR OTHER".

PAGE 12, LINE 12 -- CHANGE THE PHRASE "HAVE THIS PROPERTY APPRAISED"  
TO "HAVE ALL THE REAL AND PERSONAL PROPERTY PROPOSED FOR SALE  
APPRAISED".

ADD A SECTION 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 EFFECTIVE EVEN IF THE TRANSACTION IS NOT  
COMPLETED BY THE EFFECTIVE DATE.

PAGE 13, LINE 3 -- ADD NEW SECTION 21 WHICH READS: AS 10.25.245 IS  
REPEALED. RENUMBER SECTION 21 AS SECTION 22.

LAW OFFICERS 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

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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



ALASKA RURAL ELECTRIC COOPERATIVE  
ASSOCIATION, INC.

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

December 4, 1987

Mr. Mark Johnson  
c/o Senator Tim Kelly  
P.O. Box V  
Juneau, Alaska 99811

Dear Mark:

Enclosed is our draft of AS 10.25 with the proposed new language underlined and the deletions in brackets. Unfortunately, our lawyer's secretary did not put the deletions in caps so some of them are easy to overlook.

At any rate, the enclosed draft is submitted as the starting place for the preparation of a bill. The legislative drafters will undoubtedly restate some of our language (they always do), and sometimes their changes produce unexpected results. For that reason we would very much like to have an opportunity to review the draft from legislative legal services before the bill is submitted for introduction.

Sincerely,

David Hutchens  
Executive Director

DH:pd  
Enclosure

A R E C A

REVISIONS TO THE ELECTRIC AND TELEPHONE COOPERATIVE ACT

DISCUSSION DRAFT

December 1987

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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 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  
11           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 ser-  
vices in any other capacity without the approval of the members.  
The bylaws may, however, prescribe a fixed fee for each day of  
attendance at meetings while officially representing the coopera-  
tive [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  
bvlaws, the cooperative shall indemnify a director, officer,  
employee or agent of the cooperative, or a person who is or was  
servinq at the request of the cooperative as a director, officer,  
employee or agent of another cooperative corporation, joint ven-  
ture, 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 con-  
duct was unlawful.

12(c)           (c) A cooperative may purchase and maintain insurance on  
behalf of a director, officer, employee or agent of the coopera-  
tive, or who is or was servinq 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; an. § 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 property. (a) A cooperative may not otherwise sell, lease or dispose of [all or a substantial portion of its property] more than fifteen percent (15%) of the cooperative's total assets as reflected on the cooperative's books at the time of the transaction unless the transaction is authorized by the affirmative  
18(a) 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, sell, lease or otherwise dispose of all or a substantial 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  
18(b) agency or instrumentality of it] or to the state of Alaska. (§ 24(2) ch 93 SLA 1959; am § 2 ch 118 SLA 1970)

17 (b) Before a meeting is held to vote on authorization of disposition or sale of 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 proposed 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 meeting to vote on disposition of cooperative property. The notice must contain detailed proposals for disposition of such property;

(3) at least 90 days before the meeting, 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 meeting, 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.

(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 re-filing 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)

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  
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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

5-1554A  
Cramer  
1/21/88

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

11 An electric or telephone cooperative may

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

13 (2) have perpetual existence;

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

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

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

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

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

6 (8) exercise the power of eminent domain;

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

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

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

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

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

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

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

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

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

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

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

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

15 (4) operate a waste heat distribution system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 action or proceeding, the cooperative shall indemnify a protected  
2 person unless the person had reasonable cause to believe that the  
3 conduct was unlawful.

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

9 (d) In this section

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

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

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

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

18 \* Sec. 10. AS 10.25.150 is amended to read:

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

29 \* Sec. 11. AS 10.25.160 is amended to read:

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

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

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

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

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

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

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

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

27                 (4) labor negotiations and personnel matters;

28                 (5) matters specifically exempted from disclosure by law,  
29                 the articles of incorporation, or the bylaws;

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

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

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

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

10 \* Sec. 15. AS 10.25.235 is amended to read:

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

19 \* Sec. 16. AS 10.25.240 is amended to read:

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

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

1 merger.

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

9 \* Sec. 17. AS 10.25.260 is amended to read:

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

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

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

27 \* Sec. 18. AS 10.25.320 is amended to read:

28 Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS  
29 COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business

1 may be dissolved in the following manner.

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

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

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

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

19 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF ALL THE PROPERTY.  
20 A cooperative may not otherwise sell, lease, or dispose of more than  
21 15 percent of the cooperative's total assets, less depreciation, as  
22 reflected on the books of the cooperative at the time of the trans-  
23 action [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the  
24 transaction is authorized by the affirmative vote of not less than  
25 two-thirds [A MAJORITY] of all the members of the cooperative. How-  
26 ever, notwithstanding a provision of this chapter or any other pro-  
27 vision of law, the board of directors may, upon the authorization of a  
28 majority of those members of the cooperative voting on the issue in an  
29 election in which at least 10 percent of the eligible members return

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

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

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

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

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

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

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

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

29 \* Sec. 21. This Act takes effect immediately under AS 01.10.070(c).

5-1554A  
Cramer  
1/15/88

CHECKED  
R. P. C.  
1/20

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 SENATE BILL NO.

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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, fuel transportation and  
19 production facilities to serve the cooperative's own power-generating  
20 facilities, dams, plants and equipment, and any other real or personal  
21 property, tangible or intangible, which is necessary, convenient, or  
22 appropriate to accomplish the purpose for which the cooperative is  
23 organized;

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

27 (6) borrow money and otherwise contract indebtedness, and  
28 issue evidences of indebtedness, and secure the payment of the indebt-  
29 edness by mortgage, pledge, or deed of trust of, or any other

1 encumbrance upon its real or personal property, assets, franchises, or  
2 revenues;

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

8 (8) exercise the power of eminent domain;

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

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

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

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

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

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

22 \* Sec. 2. AS 10.25.020 is amended to read:

23 Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric  
24 cooperative may

25 (1) generate, manufacture, purchase, acquire, accumulate,  
26 and transmit electric energy, and distribute, sell, supply, and dis-  
27 pose of electric energy to its members, to governmental agencies and  
28 political subdivisions, and to other persons not exceeding 10 percent  
29 of the number of its members; however, a cooperative that [WHICH]

1 acquires existing electric facilities may continue service to persons,  
2 not in excess of 40 percent of the number of its members, who are  
3 already receiving service from these facilities without requiring them  
4 to become members, and these persons may become members upon the terms  
5 as may be prescribed in the bylaws;

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

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

17 *or existing district meeting*  
18 (4) operate a waste heat distribution system.

19 \* Sec. 3. AS 10.25.070 is amended to read:

20 Sec. 10.25.070. BYLAWS. The board of directors shall adopt the  
21 first bylaws of a cooperative to be adopted following an incorpo-  
22 ration, conversion, merger, or consolidation. Thereafter the district  
23 delegates in cooperatives having three or more districts that are not  
24 connected by a road system to another district of the cooperative may  
25 adopt, amend, or repeal the bylaws by the affirmative vote of a major-  
26 ity of the district delegates voting on the adoption, amendment, or  
27 repeal at a meeting of the district delegates. In all other coopera-  
28 tives the members shall adopt, amend, or repeal the bylaws by the  
29 affirmative vote of a majority of the members voting on the question  
[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 the annual [EACH] meeting of the members or district delegates [AND,  
26 IN THE CASE OF A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH  
27 THE MEETING IS CALLED,] shall be given to each member or district  
28 delegate, either personally or by mail, not less than 20 days nor more  
29 than 40 days before the date of the meeting. Notice of a special

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

9 \* Sec. 6. AS 10.25.120 is amended to read:

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

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

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

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

29 Sec. 10.25.140. BOARD OF DIRECTORS. The business of a

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

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

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

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

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

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

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

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

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

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

28           (4) labor negotiations and personnel matters;

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

1 the articles of incorporation, or the bylaws;

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

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

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

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

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

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

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

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

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

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

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

10 \* Sec. 17. AS 10.25.245(a) is amended to read:

11 (a) A cooperative organized under [THE PROVISIONS OF] this  
12 chapter may merge into a corporation organized under AS 10.05 that

13 (1) is engaged in business as the same type of public  
14 utility as the cooperative;

15 (2) [AND] is certificated to provide utility service of the  
16 same type as the cooperative; and

17 (3) whose certificated area is contiguous to the area of  
18 the cooperative [AS AN ELECTRIC OR TELEPHONE UTILITY].

19 \* Sec. 18. AS 10.25.260 is amended to read:

20 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives,  
21 [HEREINAFTER] designated in this section as "consolidating coopera-  
22 tive," may consolidate into a new cooperative, [HEREINAFTER] designat-  
23 ed in this section as the "new cooperative," by complying with the  
24 following requirements:

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

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

8 \* Sec. 19. AS 10.25.320 is amended to read:

9 Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS  
10 COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business  
11 may be dissolved in the following manner.

12 CAN THIS (1) The proposition to dissolve shall be submitted to the  
13 members of the cooperative at an annual or special meeting. The  
14 notice shall state [SET FORTH] the proposition.

15 DONE BY (2) At the meeting the members shall approve, by the affir-  
16 A mative vote of not less than two-thirds [A MAJORITY] of all members of  
17 the cooperative, the proposition to 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. 20. AS 10.25.400 is amended to read:

28 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF ALL THE PROPERTY.  
29 A cooperative may not otherwise sell, lease, or dispose of more than

1 15 percent of the cooperative's total assets, less depreciation, as  
2 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 by the affirmative vote of not less than  
5 two-thirds [A MAJORITY] of all the members of the cooperative. How-  
6 ever, notwithstanding a provision of this chapter or any other pro-  
7 vision of law, the board of directors may, upon the authorization of a  
8 majority of those members of the cooperative voting on the issue in an  
9 election in which at least 10 percent of the eligible members return  
10 ballots [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or other-  
11 wise dispose of all or a substantial portion of its property to  
12 another cooperative or to the state [OR TO THE HOLDER OF ITS PROPERTY  
13 TO ANOTHER COOPERATIVE OR TO THE HOLDER OF AN EVIDENCE OF INDEBTEDNESS  
14 ISSUED TO THE UNITED STATES OF AMERICA OR AN AGENCY OR INSTRUMENTALITY  
15 OF IT].

16 \* Sec. 21. AS 10.25.400 is amended by adding new subsections to read:

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

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

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

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

1 appraisal of the property; and

2 (4) at least 30 days before the vote, mail to all members  
3 any alternate proposals made by another cooperative, or by cooperative  
4 members if an alternate proposal signed by at least 50 members has  
5 been submitted to the board, together with any recommendation that the  
6 board has made.

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

9 \* Sec. 22. This Act takes effect immediately under AS 01.10.070(c).  
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COMMENTS ON COUNCIL DRAFT OF 10.25 AMENDMENTS

.075 - Pg. Line 1 New language needs to be underlined.

.125 - O.K.

.140 - Use language from January ARECA draft.

.145 - Language in point 4.1 (Fraser memo) needs to be added. Otherwise the redraft is O.K.

.150 - Pg. Line 2 Delete the new language.

.175 (a) Pg. Line 19 Delete "is present and."

.245 - Repeal this section.

.260 - If electric and telephone cooperatives already have this authority to merge with each other, a legal opinion to that effect is sufficient.

.400 (a) Use language from January ARECA draft.

.400 (a) §12, Line 21 Before "proposed buyer" insert "first."

Line 22 Delete "meeting to."

Line 29 Replace "meeting" with "vote."

Line 4 Replace "meeting" with "vote."

~~Line 6 Replace "meeting" with "vote."~~

*para 5 report on merger report "are placed at such juncture on the ballot"*

The effective date of this bill is O.K.

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 7, 1988

SUBJECT: Electric and telephone cooperatives  
(Work Order No. 5-1554)

TO: Senator Tim Kelly  
Chairman, Labor and Commerce Committee

FROM: Teresa B. Cramer *ABC*  
Legislative Counsel

Enclosed is the draft bill you requested, amending the Electric and Telephone Cooperative Act. There are several sections in which I have rewritten the ARECA draft language for clarity or to conform to the Manual of Legislative Drafting. There are also some sections in which the intent of the language proposed was not entirely clear to me.

Sec. 10.25.125. In the last sentence, the determination of members applies until the meeting is adjourned sine die. Is this consistent with the intent of the request?

Sec. 10.25.145. This section is substantially rewritten. Please note the definitions in subsection (d) of the draft. There are two points that you may wish to review.

1. I have not incorporated the phrase

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

into the definition of "protected person" contained in subsection (d) because the phrase seems to describe an agent of the cooperative. The definition already includes agents and therefore the phrase would be redundant. However, there may be a reason for spelling out this relationship. Let me know if the definition should be re-drafted.

Senator Tim Kelly

Page 2

January 7, 1988

2. In rewriting subsection (b), I have provided that a protected person is entitled to indemnification in criminal matters unless the person had reasonable cause to believe the conduct was unlawful. The language included in the request for the bill appeared to bring about the opposite result.

Sec. 10.25.175(a) and (c) are rewritten. If the changes are not consistent with the intent of your request, please let me know.

Sec. 10.25.260. The draft does not include the first change requested (to add "including electric and telephone cooperatives organized under this Act" as a description of "cooperatives") because the definition of "cooperative" in AS 10.25.640(2), already gives that result.

Sec. 10.25.400(a) changes the vote required to dispose of more than 15 percent of its property from a simple majority to a two-thirds majority. The required majority for disposing of a substantial portion of the cooperative's property to another cooperative or to the state remains a simple majority. Is this consistent with your intent?

Sec. 10.25.400(b)(1) requires a proposed buyer to advance to a cooperative disposing of more than 15 percent of its property money sufficient to pay for the appraisals. Do you wish to address how to determine who pays if there is more than one proposed buyer?

Sec. 10.25.530(c). The ARECA draft did not include the text of this subsection. I have not amended it.

Sec. 10.25.620. The ARECA draft did not include the text of this section. I have not amended it.

Sec. 22. I have added an immediate effective date to the bill after conferring with Mark Johnson of your office. If this is not appropriate, please let me know.

If I may be of further assistance, please advise.

TC:bb  
wkb1/021

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

11 An electric or telephone cooperative may

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

13 (2) have perpetual existence;

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

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

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

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

1 revenues;

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

7 (8) exercise the power of eminent domain;

8 (9) become a member of other cooperatives or corporations  
9 or own stock in them, or enter into joint ventures with other coopera-  
10 tives, corporations, the state, or political subdivisions of the  
11 state;

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

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

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

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

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

23 \* Sec. 2. AS 10.25.020 is amended to read:

24 Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric  
25 cooperative may

26 (1) either jointly or individually, plan for, generate,  
27 manufacture, purchase, acquire, accumulate, and transmit electric  
28 energy and heat, and distribute, sell, supply, and dispose of electric  
29 energy and heat to its members, to governmental agencies and political

1 subdivisions, and to other persons not exceeding 10 percent of the  
2 number of its members; however, a cooperative that [WHICH] acquires  
3 existing electric facilities may continue service to persons, not in  
4 excess of 40 percent of the number of its members, who are already  
5 receiving service from these facilities without requiring them to  
6 become members, and these persons may become members upon the terms as  
7 may be prescribed in the bylaws;

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

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

19 (4) participate in economic development activities in the  
20 service area of the cooperative.

21 \* Sec. 3. AS 10.25.070 is amended to read:

22 Sec. 10.25.070. BYLAWS. The board of directors shall adopt the  
23 first bylaws of a cooperative to be adopted following an incorpo-  
24 ration, conversion, merger, or consolidation. Thereafter the district  
25 delegates in cooperatives having three or more districts that are not  
26 connected by a road system to another district of the cooperative may  
27 adopt, amend, or repeal the bylaws by the affirmative vote of a major-  
28 ity of the district delegates voting on the adoption, amendment, or  
29 repeal at a meeting of the district delegates. In all other

1 cooperatives the members shall adopt, amend, or repeal the bylaws by  
2 the affirmative vote of a majority of the members voting on the ques-  
3 tion [ADOPTION, AMENDMENT, OR REPEAL EITHER AT A MEETING OF THE MEM-  
4 BERS OR BY MAIL BALLOT WITHOUT A MEETING]. The bylaws shall set out  
5 the rights and duties of members, district delegates, and directors  
6 and may contain other provisions for the regulation and management of  
7 the affairs of the cooperative consistent with this chapter or with  
8 the articles of incorporation of the cooperative.

9 \* Sec. 4. AS 10.25.080 is amended to read:

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

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

18 (1) prescribe additional qualifications and limitations on  
19 membership;

20 (2) require membership as a condition of obtaining service  
21 from the cooperative;

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

25 \* Sec. 5. AS 10.25.100 is amended to read:

26 Sec. 10.25.100. NOTICE OF MEETINGS. Except as otherwise pro-  
27 vided in this chapter, written notice stating the time and place of  
28 the annual [EACH] meeting of the members or district delegates [AND,  
29 IN THE CASE OF A SPECIAL MEETING, THE PURPOSE OR PURPOSES FOR WHICH

1 THE MEETING IS CALLED,) shall be given to each member or district  
2 delegate, either personally or by mail, not less than 20 days nor more  
3 than 40 days before the date of the meeting. Notice of a special  
4 meeting of the members, together with notice of the purpose for which  
5 the meeting is called, shall be given to each member or district  
6 delegate, either personally or by mail, not less than 90 days or more  
7 than 120 days before the date of the meeting. If mailed, notice is  
8 considered given when it is deposited in the United States mail with  
9 postage prepaid addressed to the member or district delegate at the  
10 address of the member or delegate as it appears on the records of the  
11 cooperative.

12 \* Sec. 6. AS 10.25.120 is amended to read:

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

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

21 Sec. 10.25.125. RECORD DATE. To determine the members en-  
22 titled to notice of a meeting of the members or to vote on a matter  
23 that is to be submitted to a vote of the members, or for any other  
24 proper purpose, the board of directors may fix in advance a date as  
25 the record date for the determination. If a record date is not  
26 fixed for the determination of members entitled to notice of a  
27 meeting or to vote on a matter, the date on which notice of the  
28 meeting or of mail voting is first mailed is the record date. When a  
29 determination of members entitled to vote at a meeting is made, the

determination applies until the meeting is adjourned sine die.

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

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 of directors from office for cause and for the election of their successors. Directors may 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. The bylaws may, however, prescribe a fixed fee for each day of attendance at a meeting while officially representing the cooperative [EACH MEETING OF THE BOARD OF DIRECTORS] and may provide for insurance and reimbursement of actual expenses incurred while performing duties as a director [OF ATTENDANCE].

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

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 bylaws, the cooperative shall indemnify a protected person who is or may be made a party to a contested matter against expenses actually and

1 reasonably incurred in connection with the contested matter. However,  
2 the cooperative may not indemnify the protected person if the person  
3 did not reasonably believe the conduct to be in, or not opposed to,  
4 the best interests of the cooperative. With respect to a criminal  
5 action or proceeding, the cooperative shall indemnify a protected  
6 person unless the person had reasonable cause to believe that the  
7 conduct was unlawful.

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

13 (d) In this section

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

15 (2) "contested matter" means a proposed, pending, or com-  
16 pleted action or proceeding, whether civil, criminal, administrative,  
17 or investigative;

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

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

22 \* Sec. 10. AS 10.25.150 is amended to read:

23 Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of  
24 a cooperative named in articles of incorporation, consolidation,  
25 merger, or conversion hold office until the next annual meeting of the  
26 members and until their successors are elected and qualify. [AT EACH  
27 ANNUAL MEETING, OR IN CASE OF FAILURE TO HOLD THE ANNUAL MEETING AS  
28 SPECIFIED IN THE BYLAWS, AT A SPECIAL MEETING CALLED FOR THAT PURPOSE,  
29 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 elected by the membership holds office for the term for which elected and until a successor is elected and qualifies.

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

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 [AT] each year [ANNUAL MEETING].

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

(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. The board of directors may conduct a meeting by teleconference or similar communications equipment. This section applies only to a meeting at which a quorum of the board is present and participates.

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

(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, including information concerning a member's financial record; 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

1 legal position of the cooperative;

2 (4) labor negotiations and personnel matters;

3 (5) matters specifically exempted from disclosure by law,  
4 the articles of incorporation, or the bylaws;

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

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

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

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

14 \* Sec. 15. AS 10.25.235 is amended to read:

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

23 \* Sec. 16. AS 10.25.240 is amended to read:

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

29 (1) The proposition for the merger of the merging

1 cooperatives into the surviving cooperative and proposed articles of  
2 merger shall be submitted to [A MEETING OF] the members of each merg-  
3 ing cooperative and of the surviving cooperative. The notice [OF THE  
4 MEETING] shall have attached to it a copy of the proposed articles of  
5 merger.

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

13 \* Sec. 17. AS 10.25.245(a) is amended to read:

14 (a) A cooperative organized under [THE PROVISIONS OF] this  
15 chapter may merge into a corporation organized under AS 10.05 that

16 (1) is engaged in business as the same type of public  
17 utility as the cooperative;

18 (2) [AND] is certificated to provide utility service of the  
19 same type as the cooperative; and

20 (3) whose certificated area is contiguous to the area of  
21 the cooperative [AS AN ELECTRIC OR TELEPHONE UTILITY].

22 \* Sec. 18. AS 10.25.260 is amended to read:

23 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives,  
24 [HEREINAFTER] designated in this section as "consolidating coopera-  
25 tive," may consolidate into a new cooperative, [HEREINAFTER] designat-  
26 ed in this section as the "new cooperative," by complying with the  
27 following requirements:

28 (1) The proposition for the consolidation into the new  
29 cooperative and proposed articles of consolidation shall be submitted

1 to [A MEETING OF] the members of each consolidating cooperative. The  
2 notice [OF THE MEETING] shall have attached to it a copy of the pro-  
3 posed articles of consolidation.

4 (2) If the proposed consolidation and the proposed articles  
5 of consolidation, with any amendments, are approved by the affirmative  
6 vote of not less than two-thirds of those members of each consolidat-  
7 ing cooperative voting on them, articles of consolidation in the form  
8 approved shall be executed and acknowledged on behalf of each consol-  
9 idating cooperative by its president or vice president and its seal  
10 shall be affixed and attested by its secretary.

11 \* Sec. 19. AS 10.25.320 is amended to read:

12 Sec. 10.25.320. DISSOLUTION OF COOPERATIVE THAT [WHICH] HAS  
13 COMMENCED BUSINESS. A cooperative that [WHICH] has commenced business  
14 may be dissolved in the following manner.

15 (1) The proposition to dissolve shall be submitted to the  
16 members of the cooperative at an annual or special meeting. The  
17 notice shall state [SET FORTH] the proposition.

18 (2) At the meeting the members shall approve, by the affir-  
19 mative vote of not less than two-thirds [A MAJORITY] of all members of  
20 the cooperative, the proposition to dissolve the cooperative.

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

1 \* Sec. 20. AS 10.25.400 is amended to read:

2           Sec. 10.25.400.   LIMITATIONS ON DISPOSITION OF ALL THE PROPERTY.  
3   A cooperative may not otherwise sell, lease, or dispose of more than  
4   15 percent of the cooperative's total assets as reflected on the books  
5   of the cooperative at the time of the transaction [ALL OR A SUBSTAN-  
6   TIAL PORTION OF ITS PROPERTY] unless the transaction is authorized by  
7   the affirmative vote of not less than two-thirds [A MAJORITY] of all  
8   the members of the cooperative. However, notwithstanding a provision  
9   of this chapter or any other provision of law, the board of directors  
10   may, upon the authorization of a majority of those members of the  
11   cooperative present at a meeting of the members, sell, lease, or  
12   otherwise dispose of all or a substantial portion of its property to  
13   another cooperative or to the state [OR TO THE HOLDER OF ITS PROPERTY  
14   TO ANOTHER COOPERATIVE OR TO THE HOLDER OF AN EVIDENCE OF INDEBTEDNESS  
15   ISSUED TO THE UNITED STATES OF AMERICA OR AN AGENCY OR INSTRUMENTALITY  
16   OF IT].

17 \* Sec. 21. AS 10.25.400 is amended by adding new subsections to read:

18           (b) Before a meeting to vote on authorization for the disposi-  
19   tion or sale of more than 15 percent of the property of the coopera-  
20   tive, the board of directors shall

21           (1) have the property appraised by three appraisers chosen  
22   by the board and not associated with the cooperative or a proposed  
23   buyer of cooperative property; the proposed buyer shall advance to the  
24   cooperative money sufficient to pay for the appraisals;

25           (2) notify all cooperative members, at least 90 days in  
26   advance, of a meeting to vote on disposition of cooperative property;  
27   the notice must contain detailed proposals for disposition of the  
28   property;

29           (3) at least 90 days before the meeting, notify all other

1 cooperatives situated and operating in the state that the property is  
2 available for disposition and include with the notice one copy of each  
3 appraisal of the property; and  
4

5 (4) at least 30 days before the meeting, mail to all mem-  
6 bers any alternate proposals made by another cooperative, or by co-  
7 operative members if an alternate proposal signed by at least 50  
8 members has been submitted to the board, together with any recommenda-  
9 tion that the board has made.

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

12 \* Sec. 22. This Act takes effect immediately under AS 01.10.070(c).  
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11.9. 15-1534  
XXXXXX/8972

# WORK ORDER REQUEST FORM

KEYWORDS: grill-lac  
concordia  
\_\_\_\_\_

ASSIGNED TO \_\_\_\_\_

REQUEST FOR: BILL  RESOLUTION  RESEARCH  OTHER

SUBJECT Y. Spill 2. 2. 1. 1.

REQUESTED FOR \_\_\_\_\_ BY \_\_\_\_\_ EXT. \_\_\_\_\_

\* DELIVER TO \_\_\_\_\_ TAKEN BY \_\_\_\_\_

INSTRUCTIONS, EXPLANATIONS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH \_\_\_\_\_

RETURN \_\_\_\_\_

TO REQUESTER

APPROVED: \_\_\_\_\_ Director, Legal Services

\_\_\_\_\_ Director, Research

REVIEWED \_\_\_\_\_

IN \_\_\_\_\_ DUE \_\_\_\_\_

TYPED - Draft \_\_\_\_\_ DATE \_\_\_\_\_

Final \_\_\_\_\_ DATE \_\_\_\_\_

PROOFED \_\_\_\_\_ DELIVERED \_\_\_\_\_

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL

*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.

# 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,

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

cc: W.A. Corbus, AELP



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. Box 1249, Fairbanks, Alaska 99707-1249, Phone 907-452-1151

ELECTRIC AND TELEPHONE COOPERATIVE ACT, AS 10.25

RESOLUTION

WHEREAS, the Electric and Telephone Cooperative Act (AS 10.25), 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 cooperative utilities and the effective control of those utilities by their member-consumers; and

WHEREAS, Golden Valley Electric Association (GVEA) participated in the ARECA study of AS 10.25 and would benefit from the resulting proposed legislation; and

WHEREAS, Representative Niilo Koponen has expressed an interest in assisting with this legislative effort subject to a clear statement of position from this Board;

THEREFORE BE IT RESOLVED:

1. GVEA fully supports the amendments to AS 10.25 proposed by ARECA;
2. GVEA appreciates the support for this effort from Representative Niilo Koponen and respectfully requests assistance for this effort from the rest of the Interior Legislative Delegation; and
3. Directs distribution of this resolution to the Interior Legislative Delegation.

CERTIFICATION

I, William D. Digan, do hereby certify that I am the Secretary of Golden Valley Electric Association, Inc., an electric non-profit cooperative membership corporation organized and existing under the laws of the State of Alaska; that the foregoing is a complete and correct copy of a resolution adopted at a meeting of the Board of Directors of this corporation, duly and properly called and held on the 25th day of January 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 the corporation this 25th day of January 1988.

(SEAL)

  
William D. Digan, Secretary

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SB 369  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to electric and telephone cooperatives  
Sponsor: Labor and Commerce Committee  
Requester: \_\_\_\_\_

Agency Affected: Commerce & Economic Development  
BRU: Banking, Securities & Corporations  
Components: \_\_\_\_\_

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

N/A

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities & Corporations

Phone: 465-2521  
Date: 2/26/88

Approved by Commissioner: J. Anthony Smith  
Agency: Commerce & Ec. Development

Date: 2/26/88

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