

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4730 HJUD HB 389 - HB 394

8672

Mr. Hartle

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April 8, 1988

8. Original version of the bill (before CS)

Please let me know if you need anything else. My understanding is that Representative Navarre intends to schedule this bill for floor action on the same day as Representative Davis' bill HB 459.

Sincerely,


Amy D. Kyle
Deputy Commissioner

Attachments

a8hartle

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STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POSITION PAPER
CS HB 389 (Judiciary)

CONTACT: AMY D. KYLE
465-2600

April 6, 1988

Title

An act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date

Effect of the bill

The bill would enable the state to file a lien against assets of a responsible party to recover its costs for cleanup of oil and hazardous waste sites, in cases where the responsible party declares bankruptcy. At present, the Department must first secure a judgement through the court and then participate in the bankruptcy proceeding.


Department Position

The bill was introduced at the request of the Governor upon the recommendation of the Department of Law. The Department supports the bill. The bill was amended in the Judiciary Committee to provide that the state be allowed to obtain a lien, but not a priority lien. The rationale for the change was that a state claim should not supercede pre-existing secured claims. Even with this change, the bill will still provide the state with an enhanced capacity to recover costs.

The state is seeing increasing numbers of cases where entities that are responsible for improper waste disposal declare bankruptcy. In such cases, the state would have to foot the bill for necessary site cleanup costs. This bill would help the state recover such costs in a bankruptcy proceeding. Similar legislation has been adopted by several other states and recommended by the U.S. Supreme Court.

Fiscal Effect

There will be no additional costs associated with this bill. The legislation should reduce State expenditures for cleanup over the long term. The Department has provided a zero fiscal note.


Dennis D. Kelso, Commissioner

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POSITION PAPER
HB 389

CONTACT: AMY D. KYLE
465-2600

January 29, 1988

Title

An act relating to oil and hazardous substance cleanup costs

Effect of the bill

The bill would give the state a priority in recovering its costs for cleanup of oil and hazardous waste sites in cases where the responsible party declares bankruptcy.

Department Position

The bill was introduced at the request of the Governor upon the recommendation of the Department of Law. The Department supports the bill.

The state is seeing increasing numbers of cases where entities that are responsible for improper waste disposal declare bankruptcy. In such cases, the state would have to foot the bill for necessary site cleanup costs. This bill would give the state priority in recovering such costs in a bankruptcy proceeding.

Similar legislation has been adopted by several other states and recommended by the U.S. Supreme Court.

Fiscal Effect

There will be no additional costs associated with this bill. The legislation should reduce State expenditures for cleanup over the long term. The Department has provided a zero fiscal note.



Dennis D. Kelso Commissioner

What case??

③

FISCAL NOTE

REQUEST:

Revision Date: 29 January 1988
 Title: An Act Relating to Oil and
 Hazardous Substance Cleanup Costs
 Sponsor: Governor
 Requestor: House Resources

Agency Affected: DEC, Dept. of Law
 BRU: DEC/Environmental Quality
 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
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The bill will not increase state expenditures. Over the long run, it will likely decrease state expenditures for spill cleanup.

Prepared by: Amy D. Kyle
 Division: Commissioner's Office

Phone: 465-2600
 Date: 29 January 1988

Approved by Commissioner: Amy D. Kyle
 Agency: Department of Environmental Conservation

Date: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

HB 310

No recommendation (2): Frank, Brown

A zero fiscal note was published March 24, 1988.

HB 310 was referred to the Rules Committee for placement on the calendar.

HB 389

The Judiciary Committee has considered:

HOUSE BILL NO. 389
"An Act relating to recovery of state costs for oil and hazardous substance releases; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 389 (Judiciary)
(same title)

Recommending do pass (4): Ulmer (Vice-chairman), Gruenberg, Navarre, Cotten

No recommendation (1): Taylor

HB 389 was referred to the Finance Committee.

HB 407

The Health, Education & Social Services Committee has considered:

HOUSE BILL NO. 407
"An Act establishing the school account in the Alaska permanent fund; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 407 (HESS)
"An Act relating to the public school account; duties of the Department of Education and school boards; increasing the instructional unit value; providing for an advisory vote; and providing for an effective date."

Recommending do pass (3): Ellis and Koponen (Co-chairmen), Gruenberg

HB 407

No recommendation (3): Hudson, Hanley, Phillips

A fiscal note was published March 24, 1988.

HB 407 was referred to the Finance Committee.

HB 459

The Judiciary Committee has considered:

HOUSE BILL NO. 459
"An Act relating to liability for releases of hazardous substances."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 459 (Resources)
(page 2671)

Recommending do pass (5): Ulmer (Vice-chairman), Cotten, Navarre, Gruenberg, Taylor

HB 459 was referred to the Rules Committee for placement on the calendar.

HB 495

The Finance Committee has considered:

HOUSE BILL NO. 495
"An Act relating to fisheries education curriculum; and providing for an effective date."

and recommends it be replaced with the following committee substitute:

CS FOR HOUSE BILL NO. 495 (HESS)
(page 2613)

Recommending do pass (6): Adams (Chairman), Larson, Goll, Swackhammer, Boyer, Davis

No recommendation (4): Pourchot, Rieger, Frank, Brown

A zero fiscal note was published March 24, 1988.

HB 495 was referred to the Rules Committee for placement on the calendar.

Judiciary Comm. Action

(4)

SUPREME COURT OF THE UNITED STATES

No. 83-1020

OHIO, PETITIONER v. WILLIAM LEE KOVACS, DBA B & W ENTERPRISES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE SIXTH CIRCUIT

[January 9, 1985]

JUSTICE O'CONNOR, concurring.

I join the Court's opinion and agree with its holding that the cleanup order has been reduced to a monetary obligation dischargeable as a "claim" under §727 of the Bankruptcy Code. I write separately to address the petitioner's concern that the Court's action will impede States in enforcing their environmental laws.

To say that Kovacs' obligation in these circumstances is a claim dischargeable in bankruptcy does not wholly excuse the obligation or leave the State without any recourse against Kovacs' assets to enforce the order. Because "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law," *Butner v. United States*, 440 U. S. 48, 54 (1979), the classification of Ohio's interest as either a lien on the property itself, a perfected security interest, or merely an unsecured claim depends on Ohio law. That classification—a question not before us—generally determines the priority of the State's claim to the assets of the estate relative to other creditors. Cf. 11 U. S. C. § 545 (trustee may avoid statutory liens only in specified circumstances). Thus, a State may protect its interest in the enforcement of its environmental laws by giving cleanup judgments the status of statutory liens or secured claims.

The Court's holding that the cleanup order was a "claim" within the meaning of § 101(4) also avoids potentially adverse

dischargeable claim

subject to state law

state can protect itself

state rights

*lien
perfected security interest
unsecured claim*

*statutory lien
secured claim*

Impact on corporation vs Individual

83-1020—CONCUR

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OHIO v. KOVACS

consequences for a State's enforcement of its order when the debtor is a corporation, rather than an individual. In a Chapter 7 proceeding under the Bankruptcy Code, a corporate debtor transfers its property to a trustee for distribution among the creditors who hold cognizable claims, and then generally dissolves under state law. Because the corporation usually ceases to exist, it has no postbankruptcy earnings that could be utilized by the State to fulfill the cleanup order. The State's only recourse in such a situation may well be its "claim" to the prebankruptcy assets.

For both these reasons, the Court's holding today cannot be viewed as hostile to state enforcement of environmental laws.

*Corporations v.s.
partnership → sole proprietorship.
~~partnership~~*

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Department of Law

JAN 18 1985

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OHIO *v.* KOVACS, DBA B & W ENTERPRISES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 83-1020. Argued October 10, 1984—Decided January 9, 1985

Petitioner State of Ohio obtained an injunction in state court ordering respondent and other defendants to clean up a hazardous waste disposal site. When the injunction was not complied with, the State obtained the appointment in state court of a receiver, who was directed to take possession of the defendants' property and other assets and to implement the injunction. The receiver took possession of the site but had not completed his tasks when respondent filed a personal bankruptcy petition. Seeking to require part of respondent's postbankruptcy income to be applied to the receiver's unfinished tasks, the State filed a motion in state court to discover respondent's income and assets. At respondent's request, the Bankruptcy Court stayed these proceedings. The State then filed a complaint in the Bankruptcy Court seeking a declaration that respondent's obligation under the state injunction was not dischargeable in bankruptcy because it was not a "debt" or "liability on a claim" within the meaning of the Bankruptcy Code. For bankruptcy purposes, a debt is a liability on a claim. Section 101(4)(B) of the Bankruptcy Code in pertinent part defines a claim as the "right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." The Bankruptcy Court ruled against the State, as did the District Court. The Court of Appeals affirmed, holding that the State essentially sought from respondent only a monetary payment and that such a required payment was a liability on a claim that was dischargeable under the Bankruptcy Code.

Held:

1. The fact that the Army Corps of Engineers, using funds recovered from those concerns that generated the wastes in question, has removed

Syllabus

the wastes from the site does not render the case moot. The State still has a stake in the outcome of the case based on its claim that the removal of the wastes did not satisfy all of respondent's obligation to clean up the site since the ground remains permeated with toxic materials that must be removed to avoid further pollution. P. 3.

2. Respondent's obligation under the injunction is a "debt" or "liability on a claim" subject to discharge under the Bankruptcy Code. Contrary to the State's contention, there is no indication in the language of § 101(4)(B) that the right to performance cannot be a claim unless it arises from a contractual arrangement. Moreover, it is apparent that Congress desired a broad definition of a "claim" and knew how to limit the application of a provision to contracts when it desired to do so. Where it is clear that what the receiver wanted from respondent after bankruptcy was the money to defray cleanup costs, the Court of Appeals did not err in concluding that the cleanup order had been converted into an obligation to pay money, an obligation that was dischargeable in bankruptcy. Pp. 3-9.

717 F. 2d 984, affirmed.

WHITE, J., delivered the opinion for a unanimous Court. O'CONNOR, J., filed a concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 83-1020

OHIO *v.* WILLIAM LEE KOVACS, DBA B & W
ENTERPRISES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[January 9, 1985]

JUSTICE WHITE delivered the opinion of the Court.

Petitioner State of Ohio obtained an injunction ordering respondent William Kovacs to clean up a hazardous waste site. A receiver was subsequently appointed. Still later, Kovacs filed a petition for bankruptcy. The question before us is whether, in the circumstances present here, Kovacs' obligation under the injunction is a "debt" or "liability on a claim" subject to discharge under the Bankruptcy Code.

I

Kovacs was the chief executive officer and stockholder of Chem-Dyne Corp., which with other business entities operated an industrial and hazardous waste disposal site in Hamilton, Ohio. In 1976, the State sued Kovacs and the business entities in state court for polluting public waters, maintaining a nuisance, and causing fish kills, all in violation of state environmental laws. In 1979, both in his individual capacity and on behalf of Chem-Dyne, Kovacs signed a stipulation and judgment entry settling the lawsuit. Among other things, the stipulation enjoined the defendants from causing further pollution of the air or public waters, forbade bringing additional industrial wastes onto the site, required the defendants to remove specified wastes from the property, and ordered the payment of \$75,000 to compensate the State for injury to wildlife.

Kovacs and the other defendants failed to comply with their obligations under the injunction. The State then obtained the appointment in state court of a receiver, who was directed to take possession of all property and other assets of Kovacs and the corporate defendants and to implement the judgment entry by cleaning up the Chem-Dyne site. The receiver took possession of the site but had not completed his tasks when Kovacs filed a personal bankruptcy petition.¹

Seeking to develop a basis for requiring part of Kovacs' postbankruptcy income to be applied to the unfinished task of the receivership, the State then filed a motion in state court to discover Kovacs' current income and assets. Kovacs requested that the Bankruptcy Court stay those proceedings, which it did.² The State also filed a complaint in the Bankruptcy Court seeking a declaration that Kovacs' obligation under the stipulation and judgment order to clean up the Chem-Dyne site was not dischargeable in bankruptcy because it was not a "debt," a liability on a "claim," within the meaning of the Bankruptcy Code. In addition, the complaint sought an injunction against the bankruptcy trustee to re-

¹ Kovacs originally filed a reorganization petition under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.*, but converted the petition to a liquidation bankruptcy under Chapter 7. See 11 U. S. C. § 1112.

² The Bankruptcy Court held that the requested hearing was an effort to collect money from Kovacs in violation of the automatic stay provision. See 11 U. S. C. § 362. It entered a specific stay as well. The District Court affirmed, ruling that Ohio was trying to enforce a judgment obtained before filing of the bankruptcy petition. The Court of Appeals for the Sixth Circuit also found the hearing barred. *In re Kovacs*, 681 F. 2d 454 (1982). In that court's view, while § 362(b) allowed governmental units to continue to enforce police powers through mandatory injunctions, it denied them the power to collect money in their enforcement efforts. Because of the later filing by Ohio of a complaint to declare that Kovacs' obligations were not claims under bankruptcy, we granted certiorari, vacated the judgment of the Court of Appeals, and remanded to that court to consider whether the dispute over the stay was moot. 459 U. S. 1167 (1983). As far as we are advised, the Court of Appeals has taken no action on the remand.

strain him from pursuing any action to recover assets of Kovacs in the hands of the receiver. The Bankruptcy Court ruled against Ohio, *In re Kovacs*, 29 B. R. 816 (SD Ohio 1982), as did the District Court. The Court of Appeals for the sixth circuit affirmed, holding that Ohio essentially sought from Kovacs only a monetary payment and that such a required payment was a liability on a claim that was dischargeable under the bankruptcy statute. *In re Kovacs*, 717 F. 2d 984 (1983). We granted certiorari to determine the dischargeability of Kovacs' obligation under the affirmative injunction entered against him. 465 U. S. (1983).

II

Kovacs alleges that the Army Corps of Engineers, using funds recovered from those concerns that generated the wastes, has removed all industrial wastes from the site and that if he has an obligation to pay those expenses, the obligation is owed to the United States, not the State. Kovacs urges that the case is therefore moot. The State argues that the case is not moot because the removal of the barrels and wastes from the surface did not satisfy all of Kovacs' obligations to clean up the site; it is said that the ground itself remains permeated with toxic materials that must be removed if further pollution of the public waters is to be avoided. We perceive nothing feigned or frivolous about the State's submission. *Sibron v. New York*, 392 U. S. 40, 57 (1968). The State surely has a stake in the outcome of this case, *United States Parole Comm'n v. Geraghty*, 445 U. S. 388, 397 (1980), which in our view is not moot. We proceed to the merits.

III

Except for the nine kinds of debts saved from discharge by 11 U. S. C. § 523(a), a discharge in bankruptcy discharges the debtor from all debts that arose before bankruptcy. § 727(b). It is not claimed here that Kovacs' obligation under the injunction fell within any of the categories of debts ex-

cepted from discharge by § 523. Rather, the State submits that the obligation to clean up the Chem-Dyne site is not a debt at all within the meaning of the bankruptcy law.

For bankruptcy purposes, a debt is a liability on a claim. § 101(11). A claim is defined by § 101(4) as follows:

“(4) ‘claim’ means—

“(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

“(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.”

The provision at issue here is § 101(4)(B). For the purposes of that section, there is little doubt that the State had the right to an equitable remedy under state law and that the right has been reduced to judgment in the form of an injunction ordering the cleanup. The State argues, however, that the injunction it has secured is not a claim against Kovacs for bankruptcy purposes because (1) Kovacs' default was a breach of the statute, not a breach of an ordinary commercial contract which concededly would give rise to a claim; and (2) Kovacs' breach of his obligation under the injunction did not give rise to a right to payment within the meaning of § 101(4)(B). We are not persuaded by either submission.

There is no indication in the language of the statute that the right to performance cannot be a claim unless it arises from a contractual arrangement. The State resorted to the courts to enforce its environmental laws against Kovacs and secured a negative order to cease polluting, an affirmative order to clean up the site, and an order to pay a sum of money to recompense the State for damage done to the fish population. Each order was one to remedy an alleged breach of

Ohio law; and if Kovacs' obligation to pay \$75,000 to the State is a debt dischargeable in bankruptcy, which the State freely concedes, it makes little sense to assert that because the cleanup order was entered to remedy a statutory violation, it cannot likewise constitute a claim for bankruptcy purposes. Furthermore, it is apparent that Congress desired a broad definition of a "claim"³ and knew how to limit the application of a provision to contracts when it desired to do so.⁴ Other provisions cited by Ohio refute, rather than support, its strained interpretation.⁵

The courts below also found little substance in the submission that the cleanup obligation did not give rise to a right to payment that renders the order dischargeable under § 727. The definition of "claim" in H. R. 8200 as originally drafted would have deemed a right to an equitable remedy for breach of performance a claim even if it did not give rise to a right to payment.⁶ The initial Senate definition of claim was narrower,⁷ and a compromise version, § 101(4), was finally adopted. In that version, the key phrases "equitable remedy," "breach of performance," and "right to payment" are not defined. See 11 U. S. C. § 101. Nor are the differences between the successive versions explained. The legislative

³H. R. Rep. No. 95-595, p. 309 (1977); S. Rep. No. 95-989, p. 21 (1978). See 2 R. Levin & K. Klee, *Collier on Bankruptcy* ¶ 101-.04, 101-16.4 (15th ed. 1984).

⁴See 11 U. S. C. § 365 (assumption or rejection of executory contracts and leases).

⁵Congress created exemptions from discharge for claims involving penalties and forfeitures owed to a governmental unit, 11 U. S. C. § 523(a)(7), and for claims involving embezzlement and larceny. § 523(a)(4). If a bankruptcy debtor has committed larceny or embezzlement, giving rise to a remedy of either damages or equitable restitution under state law, the resulting liability for breach of an obligation created by law is clearly a claim which is nondischargeable in bankruptcy.

⁶H. R. 8200, 95th Cong., 1st Sess., 309-310 (House Committee print 1977), as reported September 8, 1977.

⁷See S. 2266, 95th Cong., 1st Sess., 299 (1977), as introduced October 31, 1977.

history offers only a statement by the sponsors of the Bankruptcy Reform Act with respect to the scope of the provision:

"Section 101(4)(B) . . . is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy. For example, in some States, a judgment for specific performance may be satisfied by an alternative right to payment in the event performance is refused; in that event, the creditor entitled to specific performance would have a "claim" for purposes of a proceeding under title 11."⁸

We think the rulings of the courts below were wholly consistent with the statute and its legislative history, sparse as it is. The Bankruptcy Court ruled as follows, *In re Kovacs*, 29 B. R., at 816:

"There is no suggestion by plaintiff that defendant can render performance under the affirmative obligation other than by the payment of money. We therefore conclude that plaintiff has a claim against defendant within the meaning of 11 U. S. C. § 101(4), and that defendant owes plaintiff a debt within the meaning of 11 U. S. C. § 101(11). Furthermore, we have concluded that that debt is dischargeable."⁹

⁸ 124 Cong. Rec. 32393 (1978) (remarks of Rep. Edwards); see also *id.*, at 33992 (remarks of Sen. DeConcini).

⁹ More fully stated, the Bankruptcy Court's observations were:

"What is at stake in the present motion is whether defendant's bankruptcy will discharge the affirmative obligation imposed upon him by the Judgment Entry, that he remove and dispose of all industrial and/or other wastes at the subject premises. If plaintiff is successful here, it would be able to levy on defendant's wages, the action prevented by our Prior Decision, after defendant's bankruptcy case is closed and/or the stay of 11 U. S. C. § 362 as interpreted by our Prior Decision is no longer in force. The parties have crystallized the issue here in simple fashion, plaintiff stoutly insisting that the just identified affirmative obligation is not a monetary obligation, while defendant says that it is. The problem arises, of

The District Court affirmed, primarily because it was bound by and saw no error in the Court of Appeals' prior opinion holding that the State was seeking no more than a money judgment as an alternative to requiring Kovacs personally to perform the obligations imposed by the injunction. To hold otherwise, the District Court explained, "would subvert Congress' clear intention to give debtors a fresh start." App. JA-16. The Court of Appeals also affirmed, rejecting the State's insistence that it had no right to, and was not attempting to enforce, an alternative right to payment:

"Ohio does not suggest that Kovacs is capable of personally cleaning up the environmental damage he may have caused. Ohio claims there is no alternative right to payment, but when Kovacs failed to perform, state law gave a state receiver total control over all Kovacs' assets. Ohio later used state law to try and discover Kovacs' post-petition income and employment status in an apparent attempt to levy on his future earnings. In reality, the only type of performance in which Ohio is now interested is a money payment to effectuate the Chem-Dyne cleanup."

course, because it is not stated as a monetary obligation. Essentially for this reason plaintiff argues that it is not a monetary obligation. Yet plaintiff in discussing the background for the Judgment Entry says that it expected that defendant would generate sufficient funds in his ongoing business to pay for the clean-up. Moreover, we take judicial notice that plaintiff sought discovery with respect to defendant's earnings, the matter dealt with in our Prior Decision, for the purpose of levying upon his wages, a technique which has no application other than in the enforcement of a money judgment. There is no suggestion by plaintiff that defendant can render performance under the affirmative obligation other than by the payment of money. We therefore conclude that plaintiff has a claim against defendant within the meaning of 11 U. S. C. § 101(4), and that defendant owes plaintiff a debt within the meaning of 11 U. S. C. § 101(11). Furthermore, we have concluded that that debt is dischargeable." 29 B. R., at 818.

"The impact of its attempt to realize upon Kovacs' income or property cannot be concealed by legerdemain or linguistic gymnastics. Kovacs cannot personally clean up the waste he wrongfully released into Ohio waters. He cannot perform the affirmative obligations properly imposed upon him by the State court except by paying money or transferring over his own financial resources. The State of Ohio has acknowledged this by its steadfast pursuit of payment as an alternative to personal performance." 717 F. 2d, at 987-988.

As we understand it, the Court of Appeals held that, in the circumstances, the cleanup duty had been reduced to a monetary obligation.

We do not disturb this judgment. The injunction surely obliged Kovacs to clean up the site. But when he failed to do so, rather than prosecute Kovacs under the environmental laws or bring civil or criminal contempt proceedings, the State secured the appointment of a receiver, who was ordered to take possession of all of Kovacs' nonexempt assets as well as the assets of the corporate defendants and to comply with the injunction entered against Kovacs. As wise as this course may have been, it dispossessed Kovacs, removed his authority over the site, and divested him of assets that might have been used by him to clean up the property. Furthermore, when the bankruptcy trustee sought to recover Kovacs' assets from the receiver, the latter sought an injunction against such action. Although Kovacs had been ordered to "cooperate" with the receiver, he was disabled by the receivership from personally taking charge of and carrying out the removal of wastes from the property. What the receiver wanted from Kovacs after bankruptcy was the money to defray cleanup costs. At oral argument in this Court, the State's counsel conceded that after the receiver was appointed, the only performance sought from Kovacs was the payment of money. Tr. of Oral Arg. 19-20. Had Kovacs furnished the necessary funds, either before or after bank-

ruptcy, there seems little doubt that the receiver and the State would have been satisfied. On the facts before it, and with the receiver in control of the site,¹⁰ we cannot fault the Court of Appeals for concluding that the cleanup order had been converted into an obligation to pay money, an obligation that was dischargeable in bankruptcy.¹¹

IV

It is well to emphasize what we have not decided. First, we do not suggest that Kovacs' discharge will shield him from prosecution for having violated the environmental laws of Ohio or for criminal contempt for not performing his obligations under the injunction prior to bankruptcy. Second, had a fine or monetary penalty for violation of state law been imposed on Kovacs prior to bankruptcy, § 523(a)(7) forecloses any suggestion that his obligation to pay the fine or penalty would be discharged in bankruptcy. Third, we do not address what the legal consequences would have been had Kovacs taken bankruptcy before a receiver had been appointed and a trustee had been designated with the usual

¹⁰We were advised at oral argument that the receiver at that time was still in possession of the site, although he was contemplating terminating the receivership. Tr. of Oral Arg. 4, 56-57. We were also advised that it was difficult to tell exactly who owned the property at 500 Ford Boulevard and that although the trustee did not formally abandon the property, he did not seek to take possession of it. *Id.*, at 55, 58.

¹¹The State relies on *Penn Terra, Ltd. v. Department of Environmental Resources*, 733 F. 2d 267 (CA3 1984). There, the Court of Appeals for the Third Circuit held that the automatic stay provision of 11 U. S. C. § 362 did not apply to the State's seeking an injunction against a bankrupt to require compliance with the environmental laws. This was held to be an effort to enforce the police power statutes of the State, not a suit to enforce a money judgment. But in that case, there had been no appointment of a receiver who had the duty to comply with the state law and who was seeking money from the bankrupt. The automatic stay provision does not apply to suits to enforce the regulatory statutes of the State, but the enforcement of such a judgment by seeking money from the bankrupt—what the Court of Appeals for the Sixth Circuit concluded was involved in this case—is another matter.

state judgment
not dischargeable
in bankruptcy.

duties of a bankruptcy trustee.² Fourth, we do not hold that the injunction against bringing further toxic wastes on the premises or against any conduct that will contribute to the pollution of the site or the State's waters is dischargeable in bankruptcy; we here address, as did the Court of Appeals, only the affirmative duty to clean up the site and the duty to pay money to that end. Finally, we do not question that anyone in possession of the site—whether it is Kovacs or another in the event the receivership is liquidated and the trustee abandons the property, or a vendee from the receiver or the bankruptcy trustee—must comply with the environmental laws of the State of Ohio. Plainly, that person or

²The commencement of a case under the Bankruptcy Act creates an estate which, with limited exceptions, consists of all of the debtor's property wherever located. 11 U. S. C. § 541. The trustee, who is to be appointed promptly in Chapter 7 cases, is charged with the duty of collecting and reducing the property of the estate and is to be accountable for all of such property. 11 U. S. C. § 704. A custodian of the debtor's property appointed before commencement of the case is required to deliver the debtor's property in his custody to the trustee, unless the bankruptcy court concludes that the interest of creditors would be better served by permitting the custodian to continue in possession and control of the property. 11 U. S. C. § 543. After notice and hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. 11 U. S. C. § 554. Such abandonment is to the person having the possessory interest in the property. S. Rep. No. 95-989, p. 92 (1978). Property that is scheduled but not administered is deemed abandoned. 11 U. S. C. § 554(c). Had no receiver been appointed prior to Kovacs' bankruptcy, the trustee would have been charged with the duty of collecting Kovacs' nonexempt property and administering it. If the site at issue were Kovacs' property, the trustee would shortly determine whether it was of value to the estate. If the property was worth more than the costs of bringing it into compliance with state law, the trustee would undoubtedly sell it for its net value, and the buyer would clean up the property, in which event whatever obligation Kovacs might have had to clean up the property would have been satisfied. If the property were worth less than the cost of cleanup, the trustee would likely abandon it to its prior owner, who would have to comply with the state environmental law to the extent of his or its ability.

firm may not maintain a nuisance, pollute the waters of the State, or refuse to remove the source of such conditions. As the case comes to us, however, Kovacs has been dispossessed and the State seeks to enforce his cleanup obligation by a money judgment.

The judgment of the Court of Appeals is

Affirmed.

JOINT AND SEVERAL LIABILITY

ABOLITION OR MODIFICATION
AS OF

JULY 1987

ALABAMA

Contributory no changes

ALASKA

1986 - any defendant less than 50 % at fault cannot be held jointly liable for more than two times the percentage of fault.

✓ ARIZONA

1987 - Abolished except for:

1. intentional torts
2. hazardous waste

ARKANSAS

No changes

CALIFORNIA

1986 - Abolished for non-economic damages (Prop. 51).

COLORADO

1986 - Total abolition

1987 - Except in cases in which the defendants:

1. acted in concert
2. conspired to commit a wrongful act.

CONNECTICUT

1986 - Total abolition except where the defendants share of judgment is uncollectable.

1987 - Except for economic damages.

DELAWARE

No changes

KANSAS

1978 - Abolished case law. Brown v. Keill, 580 P.2d 867 (Kan. 1978)

KENTUCKY

No changes

LOUISIANA

1987 - Abolished to the extent that a less than 20 percent defendant would not be responsible for more than 50 percent of the damages awarded.

MAINE

No changes

MARYLAND

Contributory - No changes

MASSACHUSETTS

No changes

MICHIGAN

1986 - The doctrine is fully applicable if the plaintiff is fault free. If a plaintiff is attributed with any degree of fault the doctrine applies as follows:

1. a defendant is severally liable for the degree of fault the court or jury assessed; and
2. there is joint liability for the degree of fault the unpaid portion at the same percentage of fault assessed.

MINNESOTA

No changes

MISSISSIPPI

No changes

MISSOURI

1987 - If the defendant is less at fault than the plaintiff, the defendant is limited to two times the level of fault assessed.

MONTANA

1987 - Abolished except for:

1. defendants more than 50 % at fault

NORTH CAROLINA

Contributory no changes

NORTH DAKOTA

1987 - Abolished except for:

1. intentional torts
2. cases in which defendants acted in concert

OHIO

1980 - Total abolition (Ohio Rev Code)

OKLAHOMA

1978 and 1981 - Case law which limits the rule to cases where damages cannot be apportioned or when plaintiff is not at fault.

✓ **OREGON**

1987 - Limits the doctrine to defendants who are 15 percent or more responsible. The doctrine applies in full in pollution, hazardous waste and radioactive waste cases.

PENNSYLVANIA

No changes

RHODE ISLAND

No changes

SOUTH CAROLINA

Contributory no changes

SOUTH DAKOTA

1987 - Limited joint for those who are 50 % or less responsible for a wrongful action. Defendants pay no more than twice their percentage of fault.

TENNESSEE

Contributory - No changes

✓ TEXAS

1987 - In order to be held jointly liable, a defendant's percentage of responsibility must reach certain thresholds:

1. In negligence and malpractice cases:
 - a. "Texas Rule" - defendant's percentage of responsibility must be greater than the plaintiff's; and
 - b. 21 % threshold - defendant's percentage of responsibility must be greater than 20 %.
2. In products liability cases a defendant must reach the 21 % threshold.
3. Where the plaintiff is fault free the defendant must reach a 11 % threshold.
4. There is no threshold for defendants in pollution injury cases and toxic torts.

UTAH

1986 - Total abolition.

VERMONT

1981 - Abolished the doctrine in favor of several liability. Ut. Stat. Ann. Tit. 12, Sec. 1036.

VIRGINIA

Contributory no changes

✓ WASHINGTON

1986 - Abolished except for:

1. fault free plaintiff
2. defendants acted in concert
3. hazardous waste
4. business torts
5. manufacturing of generic products

WEST VIRGINIA

1980 - Abolition except in cases where defendants are more than 25 % at fault.

WISCONSIN

No changes

WYOMING

1986 - Total abolition

NEBRASKA

No changes

✓ NEVADA

1987 - Abolished except for:

1. product liability cases
2. toxic wastes
3. intentional torts
4. cases in which defendants acted in concert

NEW HAMPSHIRE

1981 - Abolished the doctrine in favor of several liability. N.H. Rev Stat. Ann. Sec. 507.7-a.

NEW JERSEY

No changes.

NEW MEXICO

1981 - Abolished by case law. Abolition with exceptions.

1987 - Abolished except for:

1. intentional torts
2. situations not found in the main text of the legislation and "having sound basis in public policy"
3. among defendants who have a relationship imposing vicarious liability
4. defendants held strictly liable for the manufacture and sale of a defective product

✓ NEW YCRK

1986 - Abolished in non-economic damages cases except for:

1. a defendant who is more than 50 % at fault
2. administrative hearings
3. in workers' compensation cases which implead third parties
4. intentional torts
5. toxic torts
6. product liability cases where the responsibility cannot be joined to the action
7. construction cases
8. contract cases
9. motor vehicle cases

✓ FLORIDA

1986 - Abolished except for:

1. cases less than \$25,000 worth of total damages
2. intentional torts
3. fault free plaintiffs
4. land sale practices
5. pollution control cases
6. security transactions
7. anti-trust
8. RICO Act cases

GEORGIA

1987 - Abolished, however, a jury may specify particular damages and award a jury verdict severally.

✓ HAWAII

1986 - Abolished in non-economic damages cases except for:

1. a defendant is more than 25 % at fault
2. intentional torts
3. environmental pollution
4. toxic cases
5. aircraft accidents
6. strict liability cases
7. product liability cases
8. motor vehicle accidents

✓ IDAHO

1987 - Abolished except for:

1. intentional torts
2. hazardous wastes

✓ ILLINOIS

1986 - Abolished except for:

1. defendants more than 25 % at fault
2. medical expenses
3. medical malpractice cases
4. environmental cases

INDIANA

1984 - Total abolition

IOWA

1984 - Limited the doctrine so it would not apply to defendants found to bear less than 50 percent of total fault assigned to all parties, leaving them liable for their several amount. Iowa 1984 Act, Secs. 668.1-668.3, 619.17.

tort reform bill

is there any responsibility
of the state to, wide sites or
assistance to small business to dispose
hazardous waste?
BY DAVIS, KOPONEN, NAVARRE,
SWACKHAMMER, GOLL, SUND,
DAVIDSON, ULMER AND BROWN

1 IN THE HOUSE

HOUSE BILL NO. 459

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

By a lot of
insurance??

6 For an Act entitled: "An Act relating to liability for releases of hazardous substances."

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

* Section 1. AS 46.03.822 is repealed and reenacted to read:

joint cover
liability.

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS

SUBSTANCES. (a) Notwithstanding any other provision of law, and to the extent not preempted by federal law, the following persons are strictly liable for damages to persons or property, public or private, including the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

remedial
action

(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

threatened

(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

(4) a person who owned or controlled the hazardous substance and who by contract agreement, or otherwise, arranged for

what is hazardous waste? / certified operators

Notwithstanding
strict liability

Common carrier

1 another party or entity to transport, store, dispose of, or treat the
2 hazardous substance, regardless of whether title to the hazardous
3 substance was transferred to the other party or entity as part of the
4 transaction; and

5 (5) a person who transported or accepted the hazardous
6 substance for transport to the facility, vessel, or site from which
7 the release occurred or was threatened to occur, if the person select-
8 ed the facility, vessel, or site.

9 (b) In an action to recover damages, a person otherwise liable
10 is relieved from strict liability if the person proves by clear and
11 convincing evidence

12 (1) that the release or threatened release of the hazardous
13 substance to which the damages relate occurred solely as a result of

14 (A) an act of war;

15 (B) an intentional or negligent act of a third party,
16 other than a party or its employees in privity of contract with,
17 or employed by, the person, and that the person

18 (i) exercised due care with respect to the haz-
19 ardous substance; and

20 (ii) took reasonable precautions against the act
21 of the third party and against the consequences of the act;

22 or

23 (C) an act of God; and

24 (2) in relation to (1)(B) or (C) of this section, that the
25 person, within a reasonable period of time after the act occurred,

26 (A) discovered the release or threatened release of
27 the hazardous substance; and

28 (B) began operations to contain and clean up the
29 hazardous substance.

relieved

clear or convincing

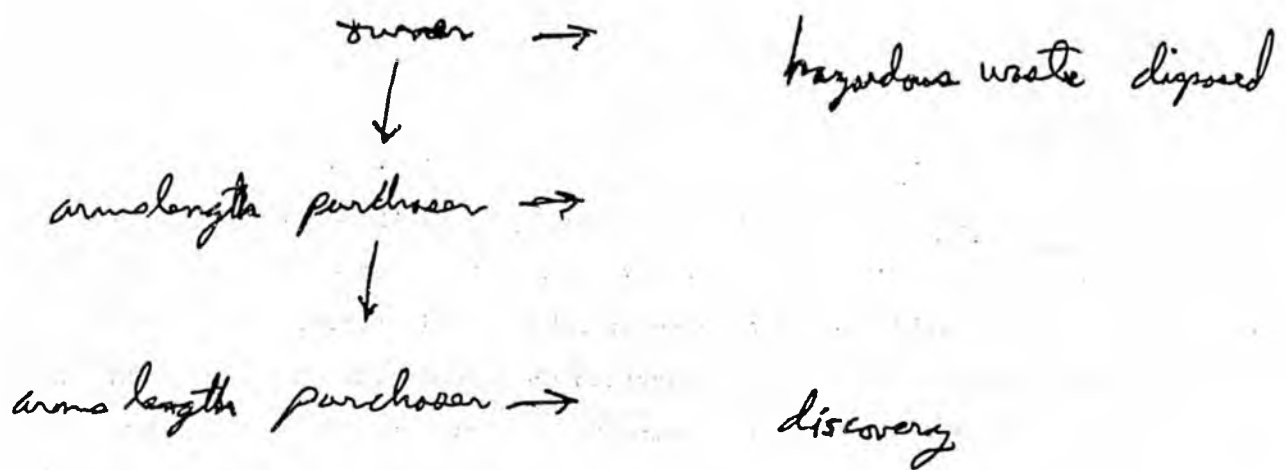
1 (c) An indemnification, hold harmless, or similar agreement or
2 conveyance is not effective to transfer liability under this section
3 from the owner or operator of a vessel or facility or from a person
4 who may be liable for a release or substantial threat of a release
5 under this section. This subsection does not bar an agreement to
6 insure, hold harmless, or indemnify a party to the agreement for
7 liability under this section. This subsection does not bar a cause of
8 action that an owner or operator or other person subject to liability
9 under this section, or a guarantor, has or would have, by reason of
10 subrogation or otherwise against a person.

11 * Sec. 2. AS 46.03.826 is amended by adding, a new paragraph to read:

12 (8) "facility" includes a

13 (A) building; structure; installation; equipment; pipe
14 or pipeline, including a pipe into a sewer or publicly owned
15 treatment works; well; pit; pond; lagoon; impoundment; ditch;
16 landfill; storage container; motor vehicle; rolling stock; or
17 aircraft; or

18 (B) site or area at which a hazardous substance has
19 been deposited, stored, disposed of, placed, or otherwise locat-
20 ed.



DNR leases:

hazardous waste

development plan as required in lease

Who pays:

generator of product
transfer

example of type of
operators that may
be effected.

Bonding → Insurance

Tail will be unreasonably long
excessive expensive

adequate bonding:

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER HB 459 HAZARDOUS SUBSTANCE CLEANUP LIABILITY

FEBRUARY 24, 1988

Effect of the bill

The bill would make the state's requirements for liability for hazardous substance spills explicit. The current statute refers to a "person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state . . ." The bill would explicitly expand the coverage of this liability provision to include other parties that have responsibility for hazardous substances, including those who generate them, those who have control over the site where they are spilled or disposed of, and those who transport them in cases where the transporters select the destination. These parties are currently liable under the common law, but the proposed statute would clarify this liability and reduce the need for litigation.

Department position

The Department supports the bill. We believe that this clarification is appropriate and would be helpful. This will assist us in carrying out the mandates of HB 470, passed two years ago to establish the Oil and Hazardous Substance Release Response Fund. The bill provides a proper scope of liability. The bill would affect generators and transporters who allow their wastes to be taken to improper or marginal operators who do not provide for proper disposal.

Fiscal effect

The Department has provided a zero fiscal note on this bill. Over time, this bill could reduce litigation costs and probability of recovery of cleanup and related costs.

Dennis D. Kelso, Commissioner



STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 459
PUBLISH DATE: 2/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to liability for
releases of hazardous substances
Sponsor: Rep. Davis et al
Requestor: Rep. Cotten

Agency Affected: DEC
BRU: Environmental Quality
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)

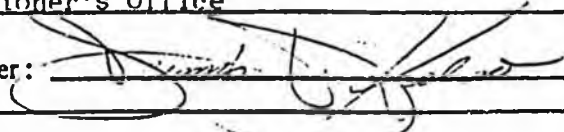
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
Division: Commissioner's Office Date: 2/23/88

Approved by Commissioner:  Date: 2/23/88
Agency: DEC

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Dept. of Law



Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • SITKA GROUP, SIERRA CLUB
KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE
SIKHA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 23, 1988

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

RE: HB 459 -- liability for
release of hazardous sub-
stances


Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM/dlm

cc: Hon. Dennis Kelso
Commissioner, ADEC



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

TO: All members of the press
From: Rep. Mike Davis
Date: February 11, 1988

PRESS RELEASE

FOR IMMEDIATE RELEASE

Today, Rep. Mike Davis (Fairbanks) will introduce HB 459, legislation to strengthen the Alaska statutes and more clearly define the responsibility for hazardous substance releases.

"I'm introducing this bill to assure that producers of hazardous substances handle and dispose of substances properly. If producers are strictly liable it will encourage proper disposal of waste," said Mike Davis the bill's sponsor.

"Last spring the Department of Environmental Conservation discovered solid and hazardous waste on property leased from the state on the North Slope. The contractor had declared bankruptcy and the state had essentially no recourse for recovering the clean up costs of almost a half million dollars. HB 459 would tie the clean up responsibility to the producers of the waste."

In many instances the state and local communities end up paying the cost of clean up because the state statutes in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release.

Under existing law, if the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape liability.

HB 459 mirrors the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. The bill will allow the same laws to be used in state court as are used in federal court.

###



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

TO: House Resources Committee

FROM: Rep. Mike Davis

RE: Strict liability for hazardous substance releases

DATE: February 24, 1988

Attached is a bill which would strengthen the Alaska statutes in regard to liability and more clearly define the responsibility for hazardous substance releases.

Many times the state and local communities are paying the cost of clean-up of hazardous substance releases. This is because the state statutes presently in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of the release. If the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape responsibility.

The intent of this bill is to more directly tie the responsible parties ie: the owner, operator, transporter, or disposer of waste to the release and encourage proper disposal of waste.

The bill is modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. This will provide the same laws used in Federal Court to be used in State courts.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1988

SUBJECT: Sectional analysis of CSHB 459()
(3/11/88 draft)

TO: Representative Mike Davis

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 rewrites AS 46.03.822, which establishes strict liability for damages resulting from the release of hazardous substances. Under existing law, only the owner or person having control over the released substance is strictly liable. CSHB 459() expands this liability to cover not only the owner or person having control, but also the owner and the operator of a facility, including the disposal site, or vessel from which the substance was released, even if it had been abandoned; a previous owner of the facility or vessel, if the person owned it at the time the substance was delivered to the facility or vessel; the person who owned the hazardous substance, and arranged for someone else to transport, treat, or dispose of the substance at a facility or incineration vessel owned by the other person; and the person who transported or accepted the substance for transport to the place from which it was released, if the transporter was the one who selected the facility, vessel, or site to which it was delivered. Subsection (a) also makes clear that the strict liability is joint and several, and specifically includes damage to the natural resources of the state and costs incurred by the state or a municipality for responding, containing, removing, or taking remedial action for a release, and for responding to a substantial threat of a release of a hazardous substance.

CSHB 459() also makes some changes to the defenses available to strict liability. Subsection (b) provides (at page 2, lines 9 - 11) that the standard of proof for proving that a person should be relieved from strict liability is "clear

and convincing evidence." This is a higher (or more burdensome) standard of proof than the usual "preponderance of the evidence" standard of civil cases. The bill removes negligence by the state or the federal government as a defense to strict liability. The bill also requires that for the negligent or intentional act of a third party to relieve a person of strict liability, the person must prove that he or she exercised due care with respect to the substance and that he or she took reasonable precautions against the third party's act and its consequences. In addition, the third party and its employees cannot be in privity of contract with or employed by the person who is seeking to be relieved from strict liability.

Subsection (c) at page 3, lines 1 - 20, spells out the circumstances under which a third party or its employees will be considered in privity of contract. Essentially, the circumstances include being a party to a land contract, deed, or other transfer of the facility from which the hazardous substance release occurred after the substance was placed at the facility. In addition, to establish a lack of privity (and thus avoid strict liability) the defendant must prove by a preponderance of the evidence that (1) the defendant has satisfied the requirements of (b)(1)(B)(i) and (ii) (at page 2, lines 18 - 21) and (2) one or more of the three circumstances listed at page 3, lines 11 - 20, exist.

Subsection (d) provides that in order to establish that the first of these three circumstances exists, the defendant can show that he or she had no reason to know that the hazardous substance was at the facility by proving that at the time the defendant acquired the facility he or she made the appropriate inquiries into the previous ownership and use of the facility. The subsection also specifies particular factors that the court should consider to determine whether the defendant in fact had reason to know that the hazardous substance was at the facility.

Subsection (e) provides that the bill does not diminish the liability of a previous owner or operator of the facility if the person would otherwise be liable. In addition, the bill specifically holds the previous owner strictly liable if he or she knew about a hazardous substance release at the facility and transferred ownership without disclosing that fact. In such a case, the previous owner could not claim the defense under (b)(1)(B).

Representative Mike Davis
Page 3
March 21, 1988

Subsection (f) states that the bill does not affect the liability of the person who caused or contributed to the release or threatened release of the hazardous substance.

Subsection (g) provides that a person may not avoid strict liability through an agreement with another person to indemnify or hold harmless. It makes clear, however, that such agreements, as well as insurance and subrogation agreements, are not prohibited.

Section 2 adds a definition of "facility", which includes not only the building or structure where a hazardous substance was contained, but also any disposal site.

EHH:bb
wkb4/031

H

B

394

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

4-28-88

HOUSE COMMITTEE REPORT

C (7)

4/29
rules

Date referred: 4/5/88

FURTHER REFERRALS:

DATE: April 28, 1988

The Judiciary Committee has considered HB 394

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

RECOMMENDS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 4/5/88
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

Chairman's signature

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 394 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

13 Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.
14 Except as provided in (b) of this section, an [AN] electric or tele-
15 phone cooperative may

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

17 (2) have perpetual existence;

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

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

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

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

1 issue evidences of indebtedness, and secure the payment of the indebt-
2 edness by mortgage, pledge, or deed of trust of, or any other encum-
3 brance upon its real or personal property, assets, franchises, or
4 revenues;

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

10 (8) exercise the power of eminent domain;

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

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

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

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

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

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

24 * Sec. 3. AS 10.25.010 is amended by adding a new subsection to read:

25 (b) An electric or telephone cooperative may not use cooperative
26 funds to promote or oppose the candidacy of a candidate for director
27 of the cooperative.

28 * Sec. 4. AS 10.25.020 is amended to read:

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

1 cooperative may

2 (1) generate, manufacture, purchase, acquire, accumulate,
3 and transmit electric energy, and distribute, sell, supply, and dis-
4 pose of electric energy to its members, to governmental agencies and
5 political subdivisions, and to other persons not exceeding 10 percent
6 of the number of its members; however, a cooperative that [WHICH]
7 acquires existing electric facilities may continue service to persons,
8 not in excess of 40 percent of the number of its members, who are
9 already receiving service from these facilities without requiring them
10 to become members, and these persons may become members upon the terms
11 as may be prescribed in the bylaws;

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

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

23 (4) operate a waste heat distribution system;

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

26 * Sec. 5. AS 10.25.070 is amended to read:

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

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

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

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

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

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

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

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

1 * Sec. 7. AS 10.25.100 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) In this section

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

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

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

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

1 or agent of a cooperative.

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

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

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

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

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

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

1 of the board participates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 * Sec. 24. AS 10.25.245 is repealed.

26 * Sec. 25. This Act takes effect immediately under AS 01.10.070(c).
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5-1695L
Cramer
4/27/88

①

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 ~~CS~~ CS FOR HOUSE BILL NO. 394 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

13 Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.
14 Except as provided in (b) of this section, an [AN] electric or tele-
15 phone cooperative may

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

17 (2) have perpetual existence;

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

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

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

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

1 issue evidences of indebtedness, and secure the payment of the indebt-
2 edness by mortgage, pledge, or deed of trust of, or any other encum-
3 brance upon its real or personal property, assets, franchises, or
4 revenues;

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

10 (8) exercise the power of eminent domain;

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

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

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

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

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

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

24 * Sec. 3. AS 10.25.010 is amended by adding a new subsection to read:

25 (b) An electric or telephone cooperative may not use cooperative
26 funds to promote or oppose the candidacy of a candidate for director
27 of the cooperative.

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.

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

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

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

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

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

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

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

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

1 * Sec. 7. AS 10.25.100 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (d) In this section

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

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

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

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

1 or agent of a cooperative.

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

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

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

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

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

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

1 of the board participates.

2 * Sec. 15. AS 10.25.175(c) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 * Sec. 25. AS 10.25.245 is repealed.

14 * Sec. 26. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

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

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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

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

13 Sec. 10.25.010. POWERS OF ELECTRIC OR TELEPHONE COOPERATIVE.
14 Except as provided in (b) of this section, an [AN] electric or tele-
15 phone cooperative may

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

17 (2) have perpetual existence;

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

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

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

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

1 issue evidences of indebtedness, and secure the payment of the indebt-
2 edness by mortgage, pledge, or deed of trust of, or any other encum-
3 brance upon its real or personal property, assets, franchises, or
4 revenues;

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

10 (8) exercise the power of eminent domain;

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

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

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

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

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

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

24 * Sec. 3. AS 10.25.010 is amended by adding a new subsection to read:

25 (b) An electric or telephone cooperative may not use cooperative
26 funds to promote or oppose the candidacy of a candidate for director
27 of the cooperative.

28 * Sec. 4. AS 10.25.020 is amended to read:

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

1 cooperative may

2 (1) generate, manufacture, purchase, acquire, accumulate,
3 and transmit electric energy, and distribute, sell, supply, and dis-
4 pose of electric energy to its members, to governmental agencies and
5 political subdivisions, and to other persons not exceeding 10 percent
6 of the number of its members; however, a cooperative that [WHICH]
7 acquires existing electric facilities may continue service to persons,
8 not in excess of 40 percent of the number of its members, who are
9 already receiving service from these facilities without requiring them
10 to become members, and these persons may become members upon the terms
11 as may be prescribed in the bylaws;

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

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

23 (4) operate a waste heat distribution system;

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

26 * Sec. 5. AS 10.25.070 is amended to read:

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

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

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

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

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

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

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

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

1 * Sec. 7. AS 10.25.100 is amended to read:

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

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

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

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

25 Sec. 10.25.125. RECORD DATE. To determine the members entitled
26 to notice of a meeting of the members or to vote on a matter that is
27 to be submitted to a vote of the members, or for any other proper
28 purpose, the board of directors may fix a date that occurs no more
29 than 90 days before the notice or vote as the record date for the

15 60
-5- deletion of
mail ballots

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

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

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

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

27 Sec. 10.25.145. LIABILITY, INDEMNIFICATION, AND INSURANCE. (a)
28 A protected person is not individually liable for conduct performed
29 within the scope of the person's duties for the cooperative. However,

1 the protected person may be held individually liable for conduct if it
2 was not reasonable for the person to believe that the conduct was in,
3 or not contrary to, the best interests of the cooperative.

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

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

19 (d) In this section

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

21 (2) "contested matter" means a proposed, pending, or com-
22 pleted action or proceeding, whether civil, criminal, administrative,
23 or investigative;

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

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

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

29 Sec. 10.25.150. TERM OF OFFICE OF DIRECTORS. The directors of

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

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

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

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

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

28 * Sec. 15. AS 10.25.175(c) is amended to read.

29 (c) The following excepted subjects may be discussed in an

Green & ...

open meeting

- 1 executive session:
- 2 (1) matters the immediate knowledge of which would clearly
- 3 have an adverse effect on the finances of the cooperative;
- 4 (2) subjects that tend to prejudice the reputation and
- 5 character of a person, including information concerning a member's
- 6 financial record; however, the person may request a public discussion;
- 7 (3) matters discussed with an attorney for the cooperative,
- 8 the immediate knowledge of which could have an adverse effect on the
- 9 legal position of the cooperative;
- 10 (4) the status of current labor negotiations and personnel
- 11 matters;
- 12 (5) matters specifically exempted from disclosure by law;
- 13 (6) sealed bids, trade secrets, or other confidential
- 14 commercial information;
- 15 (7) discussion of litigation by or against the cooperative.

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

17 (e) A member affected by action taken contrary to this section

18 may bring a suit in the superior court. The court may order appropri-

19 ate equitable relief after considering the circumstances of the case.

20 Action taken contrary to this section is not void if other equitable

21 relief is available and appropriate.

22 * Sec. 17. AS 10.25.235 is amended to read:

23 Sec. 10.25.235. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A

24 member of a cooperative may, at a reasonable time and for a proper

25 purpose, examine and make copies of the books and records of the

26 cooperative at the principal office of the cooperative. The coopera-

27 tive may charge a member an amount equal to the actual cost of du-

28 plicating documents requested under this section. The cooperative may

29 withhold books and records concerning specific matters that were

1 prepared for or during an executive session under AS 10.25.175(c) and
2 not subsequently made public by the cooperative. The cooperative may
3 also withhold the identity of public information that was referred to
4 during the executive session.

5 * Sec. 18. AS 10.25.240 is amended to read:

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

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

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

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

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

Golden
Promote

1 * Sec. 20. AS 10.25.260 is amended to read:

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

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

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

19 * Sec. 21. AS 10.25.320 is amended to read:

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

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

26 (2) For a cooperative with fewer than 10,000 subscribers,
27 the proposition is approved by the affirmative vote of two-thirds of
28 all the members of the cooperative. For a cooperative with at least
29 10,000 subscribers, the proposition is approved [AT THE MEETING THE

not just votes

1 MEMBERS SHALL APPROVE,] by the affirmative vote of not less than a
2 majority of all members of the cooperative [, THE PROPOSITION TO
3 DISSOLVE THE COOPERATIVE].

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

13 * Sec. 22. AS 10.25.400 is amended to read:

14 Sec. 10.25.400. LIMITATIONS ON DISPOSITION OF [ALL THE] PROP-
15 ERTY. ~~A cooperative~~ may not otherwise sell, lease, or dispose of more
16 than 15 percent of the cooperative's total assets, less depreciation,
17 as reflected on the books of the cooperative at the time of the trans-
18 action [ALL OR A SUBSTANTIAL PORTION OF ITS PROPERTY] unless the
19 transaction is authorized under this section. For a cooperative with
20 fewer than 10,000 subscribers, the transaction is approved by the
21 affirmative vote of not less than two-thirds of all the members of the
22 cooperative. For a cooperative with at least 10,000 subscribers, the
23 transaction is approved by the affirmative vote of not less than a
24 majority of all the members of the cooperative. However, notwith-
25 standing a provision of this chapter or any other provision of law,
26 the board of directors may, upon the authorization of a majority of
27 those members of the cooperative voting on the issue in an election in
28 which at least 10 percent of the eligible members return ballots
29 [PRESENT AT A MEETING OF THE MEMBERS], sell, lease, or otherwise

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

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

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

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

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

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

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

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

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

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

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

11 * Sec. 25. AS 10.25.245 is repealed.

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

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

Submitted by: David Hutchens, ARECA
April 20, 1988

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

A M E N D M E N T

TO: HB 394

Page 2, line 15, after ";":

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

LETTER OF INTENT
on
HB 394

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

FISCAL NOTE

REQUEST:

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

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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

Distribution (by preparer):

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

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/25/88

FURTHER REFERRALS: Judiciary

DATE: 3/31/88

The Labor & Commerce Committee has considered HB 394

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

RECOMMENDS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

W. J. ...
...
Cliff Dawkins
...

SIGNING OTHER RECOMMENDATIONS:

David Dawley (NO REC)

David Dawley
 Chairman's signature