

# MAINE STATE LEGISLATURE

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## Legislative Document

No. 137

H. P. 350

House of Representatives, January 22, 1941.

Referred to Committee on Public Utilities and 1,000 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Richardson of Strong.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-ONE

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### AN ACT to Aid Agriculture by Providing for the Organization of Rural Electrification Cooperatives.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. Short title.** This act may be cited as the "Cooperative Enabling Act".

**Sec. 2. Purpose.** Cooperative, non-profit, membership cooperations may be organized under this act for the purpose of supplying electric energy and promoting and extending the use thereof.

**Sec. 3. Definitions.** In this act:

(a) "Cooperative" means any corporation organized under this act or which becomes subject to this act in the manner hereinafter provided; and

(b) "Person" means any natural person, firm, association, corporation, business trust, partnership, public agency, state or political subdivision or agency thereof, or any body politic.

**Sec. 4. Powers.** A cooperative shall have power:

(a) To sue and be sued in its corporate name;

(b) To have perpetual existence;

(c) To adopt a corporate seal and alter the same;

(d) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum of the number of its members, provided, however, that a cooperative may distribute, sell, supply and dispose of electric energy through an electric cold storage or processing plant to such other persons without limitation;

(e) To assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by the financing thereof, or otherwise, and in connection therewith to wire, or cause to be wired, such premises, and to purchase, acquire, lease as lessor or lessee, sell, distribute, install and repair such electric and plumbing appliances, equipment, fixtures and apparatus;

(f) To assist persons to whom electric energy is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants, by the financing thereof or otherwise;

(g) To construct, purchase, lease as lessee or otherwise acquire, and to equip, maintain and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric cold storage or processing plants, lands, buildings, structures, dams, plants and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(h) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways subject, however, to the provisions of chapter sixty-eight, sections thirty-two to thirty-eight inclusive of the revised statutes as amended.

(j) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(j) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(k) To become a member of other cooperatives or corporations or to own stock therein;

(l) To adopt, amend and repeal by-laws; and

(m) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

**Sec. 5. Name.** The name of a cooperative shall be distinct from the name of any other cooperative or corporation organized under the laws of, or authorized to do business in, this state.

**Sec. 6. Incorporators.** Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

**Sec. 7. Articles of incorporation.** Articles of incorporation of a cooperative shall recite that they are executed pursuant to this act and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the names and addresses of the incorporators; and (4) the names and addresses of its trustees; and may contain any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business. Such articles shall be signed by each incorporator and acknowledged by at least two of the incorporators, or on their behalf, if they are cooperatives. It shall not be necessary to recite in the articles of incorporation of a cooperative the purpose for which it is organized or any of its corporate powers.

**Sec. 8. By-laws.** The board of trustees shall adopt the first by-laws of a cooperative to be adopted following an incorporation, conversion or consolidation. Thereafter the members shall adopt, amend or repeal the by-laws by the affirmative vote of a majority of those members voting thereon at a meeting of the members. The by-laws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this act or with its articles of incorporation.

**Sec. 9. Members.** Each incorporator of a cooperative shall be a member thereof, but no other person may become a member thereof unless such other person agrees to use electric energy or other services furnished by the cooperative when they are made available through its facilities. Any member of a cooperative who agrees to use electric energy shall cease to be a member if he does not use electric energy supplied by the cooperative within six months after it is made available to him or if electric energy

is not made available to him by the cooperative within two years after he becomes a member, or such lesser period as the by-laws of the cooperative may provide. A husband and wife may hold a joint membership in a cooperative. Membership in a cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership.

**Sec. 10. Meetings of members.** (a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the by-laws.

(b) Special meetings of the members may be called by the president, by the board of trustees, by any 3 trustees, or by not less than 10% of the members.

(c) Except as otherwise provided in this act, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than 10 days nor more than 25 days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail with postage prepaid addressed to the member at his address as it appears on the records of the cooperative.

(d) Unless the by-laws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than 1,000 members, shall be 5% of all members, present in person, and of a cooperative having more than 1,000 members, shall be 50 members, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(e) Each member shall be entitled to 1 vote on each matter submitted to a vote at a meeting of the members. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which such voting shall be permitted. No person shall vote as proxy for more than 3 members at any meeting of the members.

**Sec. 11. Waiver of notice.** Any person entitled to notice of a meeting may waive such notice in writing either before or after such meeting. If any such person shall attend such meeting, such attendance shall constitute a waiver of notice of such meeting, unless such person participates therein

solely to object to the transaction of any business because the meeting has not been legally called or convened.

**Sec. 12. Board of trustees.** (a) The business of a cooperative shall be managed by a board of not less than 5 trustees, each of whom shall be a member of the cooperative or of another cooperative which is a member thereof. The by-laws shall prescribe the number of trustees, their qualifications, other than those prescribed in this act, the manner of holding meetings of the board of trustees and of electing successors to trustees who shall resign, die, or otherwise be incapable of acting. The by-laws may also provide for the removal of trustees from office and for the election of their successors. Trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation without the approval of the members. The by-laws may, however, provide that a fixed fee and expenses of attendance may be allowed to each trustee for attendance at each meeting of the board of trustees.

(b) The trustees of a cooperative named in any articles of incorporation, consolidation, or conversion, shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next annual meeting of the members, except as otherwise provided in this act. Each trustee shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the trustees annually, the by-laws may provide that half of them, or a number as near thereto as possible, shall be elected to serve until the next annual meeting of the members and that the remaining trustees shall be elected to serve until the second succeeding annual meeting. Thereafter, as trustees' terms expire, the members shall elect their successors to serve until the second succeeding annual meeting after their election.

(d) A majority of the board of trustees shall constitute a quorum.

(e) If a husband and wife hold a joint membership in a cooperative, either one, but not both, may be elected a trustee.

(f) The board of trustees may exercise all of the powers of a cooperative not conferred upon the members by this act, or its articles of incorporation or by-laws.

**Sec. 13. Districts.** The by-laws may provide for the division of the

territory served or to be served by a cooperative into 2 or more districts for any purpose, including, without limitation, the nomination and election of trustees and the election and functioning of district delegates. In such case the by-laws shall prescribe the boundaries of the districts, or the manner of establishing such boundaries, and the manner of changing such boundaries, and the manner in which such districts shall function. No member at any district meeting and no district delegate at any meeting shall vote by proxy or by mail.

**Sec. 14. Officers.** The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer, who shall be elected annually by and from the board of trustees. When a person holding any such office ceases to be a trustee he shall cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it deems necessary or advisable and shall prescribe their powers and duties. Any officer may be removed from office and his successor elected in the manner prescribed in the by-laws.

**Sec. 15. Amendment of articles of incorporation.** A cooperative may amend its articles of incorporation by complying with the following requirements: The proposed amendment shall be presented to a meeting of the members, the notice of which shall set forth or have attached thereto the proposed amendment. If the proposed amendment, with any changes, is approved by the affirmative vote of not less than two-thirds of those members voting thereon at such meeting, articles of amendment shall be executed and acknowledged on behalf of the cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite that they are executed pursuant to this act and shall state: (1) the name of the cooperative; (2) the address of its principal office; and (3) the amendment to its articles of incorporation. The president or vice-president executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section in respect of the amendment set forth in such articles were duly complied with.

**Sec. 16. Change of location of principal office.** A cooperative may, upon authorization of its board of trustees or its members, change the location of its principal office by filing a certificate reciting such change of principal office, executed and acknowledged by its president or vice-president under its seal attested by its secretary, in the office of the secretary of state.

**Sec. 17. Consolidation.** Any two or more cooperatives (each of which is hereinafter designated a "consolidating cooperative"), may consolidate into a new cooperative (hereinafter designated the "new cooperative"), by complying with the following requirements:

(a) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be submitted to a meeting of the members of each consolidating cooperative, the notice of which shall have attached thereto a copy of the proposed articles of consolidation;

(b) If the proposed consolidation and the proposed articles of consolidation, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at each such meeting, articles of consolidation in the form approved shall be executed and acknowledged on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of consolidation shall recite that they are executed pursuant to this act and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the trustees of the new cooperative; and (5) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner in which members of the consolidating cooperatives may or shall become members of the new cooperative; and may contain any provisions not inconsistent with this act deemed necessary or advisable for the conduct of the business of the new cooperative. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall make and annex thereto an affidavit stating that the provisions of this section in respect of such articles were duly complied with by such cooperative.

**Sec. 18. Effect of consolidation.** (a) In the case of a consolidation the existence of the consolidating cooperatives shall cease and the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative;

(b) All the rights, privileges, immunities and franchises and all property, real and personal, including without limitation applications for membership, all debts due on whatever account and all other choses in action, of each of the consolidating shall be deemed to be transferred to and vested in the new cooperative without further act or deed;

(c) The new cooperative shall be responsible and liable for all the liabilities and obligations of each of the consolidating cooperatives and any



claim existing or action or proceeding pending by or against any of the consolidating cooperatives may be prosecuted as if the consolidation had not taken place, but the new cooperative may be substituted in its place; and

(d) Neither the rights of creditors nor any liens upon the property of any of such cooperative shall be impaired by such consolidation.

**Sec. 19. Conversion of existing corporations.** Any corporation organized under the laws of this state and supplying or authorized to supply electric energy may be converted into a cooperative by complying with the following requirements and shall thereupon become subject to this act with the same effect as if originally organized under this act:

(a) The proposition for the conversion of such corporation into a cooperative and proposed articles of conversion to give effect thereto shall be submitted to a meeting of the members or stockholders of such corporation, the notice of which shall have attached thereto a copy of the proposed articles of conversion;

(b) If the proposition for the conversion of such corporation into a cooperative and the proposed articles of conversion, with any amendments, are approved by the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, by the affirmative vote of the holders of not less than two-thirds of those shares of the capital stock of such corporation represented at such meeting and voting thereon articles of conversion in the form approved shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The articles of conversion shall recite that they are executed pursuant to this act and shall state: (1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative; (2) the statute or statutes under which it was organized; (3) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (4) its name as a cooperative; (5) the address of the principal office of the cooperative; (6) the names and addresses of the trustees of the cooperative; and (7) the manner in which members or stockholders of such corporation may or shall become members of the cooperative; and may contain any provisions not inconsistent with this act deemed necessary or advisable for the conduct of the business of the cooperative. The president or vice-president executing such articles of conversion shall make and annex thereto an affidavit stating that the provisions of this section were duly complied with in respect of such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

**Sec. 20. Dissolution.** (a) A cooperative which has not commenced business may be dissolved by delivering to the secretary of state articles of dissolution which shall be executed and acknowledged on behalf of the cooperative by a majority of the incorporators and which shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) that the cooperative has not commenced business; (4) that any sums received by the cooperative, less any part thereof disbursed for expenses of the cooperative, have been returned or paid to those entitled thereto; (5) that no debt of the cooperative is unpaid; and (6) that a majority of the incorporators elect that the cooperative be dissolved.

(b) A cooperative which has commenced business may be dissolved in the following manner: The members at any meeting shall approve, by the affirmative vote of not less than two-thirds of those members voting thereon at such meeting, a proposal that the cooperative be dissolved. Upon such approval, a certificate of election to dissolve (hereinafter designated the "certificate"), executed and acknowledged on behalf of the cooperative by its president or vice-president under its seal, attested by its secretary, and stating: (1) the name of the cooperative; (2) the address of its principal office; and (3) that the members of the cooperative have duly voted that the cooperative be dissolved, shall, together with an affidavit made by its president or vice-president executing the certificate, stating that the statements in the certificate are true, be submitted to the secretary of state for filing. Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except to the extent necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state. The board of trustees shall immediately cause notice of the dissolution proceedings to be mailed to each known creditor of and claimant against the cooperative and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located. All actions against the cooperative shall be commenced within one year from the date of filing the certificate of election to dissolve. The board of trustees shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, and do all other things required to wind up its business, and after paying or discharging or adequately providing for the payment or discharge of all its debts, obligations and liabilities, shall after one year from the date of filing the certificate to dissolve, distribute any remaining sums among its members and former members in proportion to the patronage of the respective members or former members during the seven years next preceding the date of the filing

of the certificate by the secretary of state, or if the cooperative has not been in existence for such period, then during the period of its existence prior to such filing. The board of trustees shall thereupon authorize the execution of articles of dissolution, which shall be executed and acknowledged on behalf of the cooperative by its president or vice-president, and its seal shall be affixed thereto and attested by its secretary. The articles of dissolution shall recite that they are executed pursuant to this act and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which the certificate of election to dissolve was filed by the secretary of state; (4) that there are no actions or suits pending against the cooperatives; (5) that all debts, obligations and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor; and (6) that the preceding provisions of this subsection have been duly complied with. The president or vice-president executing the articles of dissolution shall make and annex thereto an affidavit stating that the statements made therein are true.

**Sec. 21. Filing of articles.** Articles of incorporation, amendment, consolidation, conversion, or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this act, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this act, he shall, upon the payment of the fees as in this act provided, file such articles in the records of his office and upon such filing the incorporation, amendment, consolidation, conversion, or dissolution provided for therein shall be in effect. The provisions of this section shall also apply to certificates of election to dissolve and affidavits executed in connection therewith pursuant to subsection (b) of section 20 of this act.

**Sec. 22. Refunds to members.** Revenues of a cooperative for any fiscal year shall be applied as follows:

(a) To defray the expenses of the operation and maintenance of the facilities of the cooperative during such fiscal year;

(b) To pay interest and principal obligations of the cooperative coming due in such fiscal year;

(c) To finance, or to provide a reserve for the financing of, the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) To provide a reasonable reserve for working capital; and

(e) To provide a reserve for the payment of indebtedness of the cooperative in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year.

(f) Any remaining revenues shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members, paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

**Sec. 23. Non-liability of members for debts of cooperative.** No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execution therefor.

**Sec. 24. Recordation of mortgages; effect thereof.** All after-acquired property of such cooperative or foreign corporation described or referred to as being mortgaged or pledged in any mortgage, deed of trust or other instrument, shall become subject to the lien thereof immediately upon the acquisition of such property by such cooperative or foreign corporation, whether or not such property was in existence at the time of the execution of such mortgage, deed of trust or other instrument. Recordation of any mortgage, deed of trust or other instrument shall constitute notice and otherwise have the same effect with respect to such after-acquired property as it has under the laws relating to recordation, with respect to property owned by such cooperative or foreign corporation at the time of the execution of such mortgage, deed of trust or other instrument and therein described or referred to as being mortgaged or pledged thereby.

**Sec. 25. Fees.** The secretary of state shall charge and collect for filing articles of incorporations, articles of amendment, articles of consolidation, or articles of conversion a fee of \$5; for filing certificate of election to dissolve, articles of dissolution or certificate of change of principal office a fee of \$2.

**Sec. 26. Cooperatives not public utilities.** Cooperatives shall be exempt in all respects from the jurisdiction and control of the public utilities commission.

**Sec. 27. Separability of provisions.** If any provisions of this act, or the application of such provision to any person or circumstance is held

invalid, the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby. This act shall be construed liberally.