

MAINE STATE LEGISLATURE

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the parties operating such railroad, as to constructing lines along the same, or as to the manner in which lines may be constructed upon, along, or across the same, either party may apply to the public utilities commission, who, after notice to those interested, shall hear and determine the matter and make their award in relation thereto, which shall be binding upon the parties. The expenses of the hearing shall be paid by the company, person, or association seeking to construct lines on the railroad, except that if the public utilities commission shall find that parties operating the railroad have unreasonably refused their consent, said parties shall pay the expenses.

*106 Me. 365.

Provisions for weekly payment of wages apply to telegraph and telephone companies, c. 25, § 33.

Limitation of proceedings for damage for land taken by right of eminent domain, c. 99, § 113.

Penalty for improper use of telephones, c. 123, § 16; for unlawful combination against gas and electrical companies, c. 123, § 17; for malicious injuries to fixtures of electric power line, c. 118, §§ 15, 16.

CHAPTER 47.

RURAL ELECTRIFICATION COOPERATIVES.

Sec. 1. Short title. 1941, c. 281, § 1. This chapter may be cited as the "Co-operative Enabling Act."

Sec. 2. Purpose. 1941, c. 281, § 2. Cooperative, non-profit, membership cooperations may be organized under the provisions of this chapter for the purpose of supplying electric energy and promoting and extending the use thereof.

See c. 46, § 10, re special rural electric companies.

Sec. 3. Definitions. 1941, c. 281, § 3. As used in this chapter, the following words shall have the following meanings:

I. "Cooperative" means any corporation organized under the provisions of this chapter or which becomes subject to the provisions of this chapter in the manner hereinafter provided; and

II. "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. 1941, c. 281, § 4. A cooperative shall have power:

I. To sue in its corporate name;

II. To be sued in its corporate name;

III. To adopt a corporate seal and alter the same;

IV. To generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy to its members;

V. 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;

VI. 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;

VII. 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; provided, however, that a cooperative shall not have the power of eminent domain; and provided further, that in the construction and operation of their facilities, cooperatives shall comply with all safety laws and regulations applicable to electric companies;

VIII. To construct, maintain, and operate electric transmission and distribution lines along, upon, under, and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges, and causeways, subject, however, to the provisions of sections 30 to 42, inclusive, of chapter 46;

IX. 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;

X. 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;

XI. To become a member of other cooperatives or corporations or to own stock therein;

XII. To adopt, amend, and repeal by-laws; and

XIII. 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. 1941, c. 281, § 5. 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. 1941, c. 281, § 6. Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

Sec. 7. Articles of incorporation. 1941, c. 281, § 7. Articles of incorporation of a cooperative shall recite that they are executed pursuant to the provisions of this chapter and shall state:

- I. The name of the cooperative;
- II. The address of its principal office;

III. The names and addresses of the incorporators; and

IV. The names and addresses of its trustees; and may contain any provisions not inconsistent with this chapter 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. 1941, c. 281, § 8. 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 the provisions of this chapter or with its articles of incorporation.

Sec. 9. Members. 1941, c. 281, § 9. 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 6 months after it is made available to him or if electric energy is not made available to him by the cooperative within 2 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. 1941, c. 281, § 10.

I. 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.

II. 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.

III. Except as otherwise provided in this chapter, 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.

IV. 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.

V. 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. 1941, c. 281, § 11. 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. 1941, c. 281, § 12.

I. 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 chapter, 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.

II. The trustees of a cooperative named in any articles of incorporation 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 chapter. Each trustee shall hold office for the term for which he is elected and until his successor is elected and qualified.

III. 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.

IV. A majority of the board of trustees shall constitute a quorum.

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

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

Sec. 13. Districts. 1941, c. 281, § 13. The by-laws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and elec-

tion 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. 1941, c. 281, § 14. 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. 1941, c. 281, § 15. 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 $\frac{2}{3}$ 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 the provisions of this chapter and shall state:

- I. The name of the cooperative;
- II. The address of its principal office; and
- III. 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 to the amendment set forth in such articles were duly complied with.

Sec. 16. Change of location of principal office. 1941, c. 281, § 16. 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. Conversion of existing corporations. 1941, c. 281, § 17. Any corporation organized on a cooperative plan 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 the provisions of this chapter with the same effect as if originally organized under the provisions hereof:

I. 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;

II. 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 $\frac{2}{3}$ 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 $\frac{2}{3}$ 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 the provisions of this chapter and shall state:

- A. The name of the corporation and the address of its principal office prior to its conversion into a cooperative;
- B. The statute or statutes under which it was organized;
- C. A statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to the provisions of this chapter;
- D. Its name as a cooperative;
- E. The address of the principal office of the cooperative;
- F. The names and addresses of the trustees of the cooperative; and
- G. 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 the provisions this chapter 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 to such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

Sec. 18. Dissolution. 1941, c. 281, § 18.

I. 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:

- A. The name of the cooperative;
- B. The address of its principal office;
- C. That the cooperative has not commenced business;
- D. 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;
- E. That no debt of the cooperative is unpaid; and
- F. That a majority of the incorporators elect that the cooperative be dissolved.

II. 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 $\frac{2}{3}$ 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 2 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 1 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 1 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 7 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 the provisions of this chapter and shall state: (1) the name of the cooperative; (2) the address of its principal office; (3) the date on which the certificate of election to dissolve was filed by the secretary of state; (4) that there are no actions or suits pending against the cooperative; (5) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made 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. 19. Filing of articles. 1941, c. 281, § 19. Articles of incorporation, amendment, conversion, or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this chapter, 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 chapter, he shall, upon the payment of the fees as provided in this chapter, file such articles in the records of his office and upon such filing the incorporation, amendment, 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 II of section 18.

Sec. 20. Refunds to members. 1941, c. 281, § 20. Revenues of a cooperative for any fiscal year shall be applied as follows:

I. To defray the expenses of the operation and maintenance of the facilities of the cooperative during such fiscal year;

II. To pay interest and principal obligations of the cooperative coming due in such fiscal year;

III. 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;

IV. To provide a reasonable reserve for working capital; and

V. 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.

VI. 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. 21. Non-liability of members for debts of cooperative. 1941, c. 281, § 21. 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. 22. Recordation of mortgages; effect thereof. 1941, c. 281, § 22. 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. 23. Fees. 1941, c. 281, § 23. The secretary of state shall charge and collect for filing articles of incorporation, 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. 24. Cooperatives not public utilities. 1941, c. 281, § 24. Cooperatives shall not be deemed to be public utilities; except with the consent of the public utilities commission, no premises shall receive service from any cooperative, if such premises were on the date of the organization of such cooperative receiving or prior thereto had been receiving electric service from a public utility, or which are situated on those portions of roads or ways along which the distribution lines of an existing utility are located, nor if such service from the cooperative is to be rendered in the territory in which an existing utility is authorized to render such service, unless and until such service has been requested of the existing utility by various persons whose premises are so located as to be fairly representative of the route or routes of the proposed distribution line or lines of the cooperative to be built in such territory and the utility has either refused

or neglected for an unreasonable length of time to furnish such service; any existing utility may give its consent to a cooperative to serve any portion of the territory which said utility is authorized to serve. Any person who has been refused membership in or service by a cooperative may complain of such refusal to the public utilities commission which may, after hearing, upon finding that such service may reasonably be rendered, order such person to be served.

CHAPTER 48.

AQUEDUCTS AND WATER COMPANIES. RIGHT OF EMINENT DOMAIN.

Sections 1-10 Aqueducts and Water Companies.

Sections 11-22 The Location of Property Taken for Public Uses, and the Assessment of Damages Therefor.

Sections 23-27 Condemnation Proceedings by Water Districts.

Aqueducts and Water Companies

Sec. 1. Meetings of proprietors for incorporation, how called. R. S. c. 69, § 1. Any persons associated by agreement in writing as proprietors of an aqueduct, for conveying fresh water into or within any town, or as proprietors of funds for establishing such aqueduct, may apply in writing to some justice of the peace for the county in which any portion thereof is situated, or is proposed to be made, stating the name and style of their association, and the objects of their proposed meeting, and requesting such justice to issue his warrant to some one of the persons applying, directing him to call such meeting; and such justice may thereupon issue his warrant accordingly, stating therein the time, place, and object of such meeting; and the proprietor, to whom the warrant is directed, shall notify such meeting by posting the substance of the warrant, with his notice annexed thereto, 7 days at least before the meeting, in some public place in every town in which any portion of the aqueduct is, or is proposed to be made.

Sec. 2. Proceedings at meeting. R. S. c. 69, § 2. The proprietors assembled under such warrant, and their successors and assigns, shall be a corporation by the name stated in their application; and may at any legal meeting agree on the manner of calling future meetings; choose any number of directors and other officers to manage their business, and a clerk who shall be sworn, and shall record all by-laws, votes, and other proceedings of the corporation, in books provided and kept by him therefor, open to the inspection of any person appointed by the legislature for that purpose.

Sec. 3. Authority of directors; enforcement of assessments. R. S. c. 69, § 3. The directors shall choose one of their number president; and may make such assessments on the proprietors of the shares in such aqueduct or funds as they find necessary; and if a proprietor fails to pay such assessment for 30 days after notice, they may maintain an action on the case in their corporate name to recover the amount thereof, or may sell, at auction, so many of his shares as are sufficient to pay the same, with necessary charges; notice of the sale of such shares shall be given by advertising in some newspaper printed in the county