RURAL ELECTRIC COOPERATIVE LAW

Laws 1942, Chapter 566

AN ACT relating to rural electric cooperative, non-profit, membership corporations, constituting chapter seventy-seven-a of the consolidated laws

Became a law April 29, 1942, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER SEVENTY-SEVEN-A OF THE CONSOLIDATED LAWS

Rural Electric Cooperative Law

ARTICLE 1

SHORT TITLE; DEFINITIONS

§ 1. Short title. This chapter shall be known as the "Rural Electric Cooperative Law."

§ 2. Definitions. As used in this chapter:

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

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

(c) "Rural areas" means any area of the state not included within the boundaries of any city or village having a population in excess of twenty thousand inhabitants.

ARTICLE 2
PURPOSE; ORGANIZATION AND MANAGEMENT; POWERS

§ 10. Purpose. Cooperative, non-profit, membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas in accordance with the provisions of this chapter.

§ 11. Incorporators. Five or more natural persons, or two or more cooperatives, may organize a cooperative in the manner hereinafter provided.

§ 12. Name. The name of a cooperative shall include the words "Electric" and "Cooperative," and the abbreviation "Inc.," and 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. Only a cooperative or corporation doing business in this state pursuant to this chapter shall use both the words "Electric" and "Cooperative" in its name.

§ 13. Articles of incorporation. Articles of incorporation of a cooperative shall recite that they are executed pursuant to this chapter 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 directors; 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.

§ 14. 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 such other persons shall become members within one year after they commence taking electric service from the cooperative; and provided, further however, that the furnishing by a cooperative of electric cold storage or processing plant service shall not be deemed to be distributing, selling, supplying or disposing of electric energy, and provided, further however, that a cooperative shall not distribute, sell, supply or dispose of electric energy to any premises or building receiving and using central station electric service or entitled to receive such service as provided by section twelve of the transportation corporations law on the effective date of this chapter or to any premises or buildings hereafter served by any person, corporation or municipality supplying central station electric service, if no co-operative service is available to such premises or building at the time of such installation, without the consent of the person, corporation, or municipality supplying or required by said section twelve of the transportation corporations law to supply such central station electric service;

(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 making loans therefor, 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 making loans therefor;

(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 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;

(i) 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;

(j) 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, upon obtaining from the state or the county, town, village or other appropriate municipality the rights, franchises, permissions or consents therefor required by law, provided, however, that the approval or consent of the public service commission shall not be necessary to the obtaining of any such right, franchise, permission or consent or to the exercise thereof or of any right or privilege thereunder;

(k) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of such power by other corporations constructing or operating electric transmission and distribution lines or systems;

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

(m) To conduct its business and exercise its powers within or without this state;

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

(o) 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.

§ 15. By-laws. The board of directors shall adopt the first by-laws of a cooperative to be adopted following an incorporation, conversion, merger 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 directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation.

§ 16. 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 of membership.

§ 17. 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 directors, by any three directors, or by not less than ten per centum of the members.

(c) 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 ten days nor more than forty-five 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 one thousand members, shall be five per centum of all members, present in person or electronically, and of a cooperative having more than one thousand members, shall be fifty members, present in person or electronically. This provision shall not prevent a cooperative from adopting a by-law that only allows an in-person quorum for meetings of members. 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 one vote on each matter submitted to a vote at a meeting of the members. Voting shall either be in person or by proxy, mail, or electronic means, or any combination of the above. If the by-laws provide for voting by proxy, mail, or electronic means, they shall also prescribe the conditions under which such voting shall be permitted. No person shall vote as proxy for more than three members at any meeting of the members.

(f) Every cooperative shall keep, at the office of the cooperative, correct and complete books and records of account and minutes of the proceedings of its members, board and executive committees, if any, and shall keep at such office a list or record containing the names and addresses of all members, the class or classes of membership and amount of patronage capital allocated and unretired to each member, as well as the amount of any patronage capital allocated to nonmembers, and the dates when they respectively were allocated such patronage capital. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time.

(g) The board of directors may, in its sole discretion, direct that meetings of members be held partially or solely by means of electronic communication, and the electronic service and/or platform by which a meeting is held shall be the place of such meeting for purposes of this section if such meeting is held solely by means of electronic communication. Meetings conducted partially or solely by means of electronic communication pursuant to this subdivision and any member's electronic participation in such meetings shall be subject to such guidelines and procedures as the board adopts, provided the board shall implement reasonable measures to: (1) verify that each person participating electronically is a member or a proxy of a member according to the terms of subdivision (e) of this section; (2) provide each member participating electronically with a reasonable opportunity to participate in the meeting, including an opportunity to propose, object to, and vote upon a specific action to be taken by the members, and to see, read, or hear the proceedings of the meeting substantially and concurrently with such proceedings; (3) record and maintain a record of any votes or other actions taken by electronic communication at the meeting; and (4) within a reasonable time after, but not to exceed sixty days after the meeting, distribute minutes of such meeting to the members of the cooperative in electronic or paper form. Members of a cooperative shall not hold meetings by means of electronic communication until the provisions of this subdivision have been adopted as a bylaw at a duly held membership meeting.

§ 18. 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.

§ 19. Board of directors. (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another cooperative which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications, other than those prescribed in this chapter, the manner of holding meetings of the board of directors and of electing successors to directors who shall resign, die, or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. The cooperative may provide a fair remuneration for its officers and directors and for members of its executive committee.

(b) The directors of a cooperative named in any articles of incorporation, consolidation, merger 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 directors to hold office until the next annual meeting of the members, except as otherwise provided in this chapter. Each director 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 directors annually, the by-laws may provide that directors may serve two or three year terms.

(1) If the by-laws provide that directors may serve two year terms, 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 the remaining directors shall be elected to serve until the second succeeding annual meeting. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second succeeding annual meeting after their election.

(2) If the by-laws provide that directors may serve three year terms, one-third of them, or a number as near thereto as possible, shall be elected to serve until the third succeeding annual meeting, one-third shall be elected to serve until the second annual meeting and one-third shall serve until the next annual meeting. Thereafter as directors' terms expire, the members shall elect their successors to serve until the third succeeding annual meeting after their election.

(3) A change in by-laws decreasing or increasing the terms of directors may not decrease nor increase the term of a duly elected director already in office, but shall become effective for any new term served after the effective date of the by-law change.

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

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

(f) The board of directors 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.

§ 19-a. Conflict of interest policy. (a) Except as provided in subdivision (d) of this section, the board of every rural electric cooperative shall adopt, and oversee the implementation of, and compliance with, a conflict of interest policy to ensure that its directors, officers and employees act in the cooperative's best interest and comply with applicable legal requirements.

(b) The conflict of interest policy shall include, at a minimum, the following provisions:

(1) a definition of the circumstances that constitute a conflict of interest;

(2) procedures for disclosing a conflict of interest or possible conflict of interest to the board or to a committee of the board, and procedure for the board or committee to determine whether a conflict exists;

(3) a requirement that the person with the conflict of interest not be present at or participate in the board or committee deliberation or vote on a matter giving rise to such conflict, provided that nothing in this section shall prohibit the board or a committee from requesting that the person with the conflict of interest present information as background or answer questions at a committee or board meeting prior to the commencement of deliberation or voting relating thereto;

(4) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict; and

(5) a requirement that the existence and resolution of the conflict be documented in the cooperative's records, including in the minutes of any meeting at which the conflict was discussed or voted upon.

(c) The conflict of interest policy shall require that prior to the initial election of any director, and annually thereafter, such director shall complete, sign and submit to the secretary of the cooperative or a designated compliance officer a written statement identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the cooperative has a relationship, and any transaction in which the cooperative is a participant and in which the director might have a conflicting interest. The policy shall require that each director annually resubmit such written statement. The secretary of the cooperative or the designated compliance officer shall provide a copy of all the completed statements to the president of the board.

(d) A rural electric cooperative that has adopted and possesses a conflict of interest policy pursuant to federal, state or local laws that is substantially consistent with the provisions of subdivision (b) of this section shall be deemed in compliance with provisions of this section.

(e) Nothing in this section shall be interpreted to require a rural electric cooperative to adopt any specific conflict of interest policy not otherwise required by this section or any other law or rule, or to supersede or limit any requirement or duty governing conflicts of interest required by any other law or rule.

§ 19-b. Whistleblower policy. (a) Except as provided in subdivision (c) of this section, the board of every rural electric cooperative shall adopt, and oversee the implementation of, and compliance with, a whistleblower policy to protect from retaliation persons who report suspected improper conduct. Such policy shall provide that no director, officer or employee of a rural electric cooperative who in good faith reports any action or suspected action taken by or within the cooperative that is illegal, fraudulent or in violation of any adopted policy or bylaw of the cooperative shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.

(b) The whistleblower policy shall include the following provisions:

(1) procedures for the reporting of violations or suspected violations of laws or cooperative policies or bylaws, including procedures for

preserving the confidentiality of reported information;

(2) a requirement that an employee, officer or director of the cooperative be designated to administer the whistleblower policy and to report to the board or an authorized committee thereof;

(3) a requirement that the person who is the subject of a whistleblower complaint not be present at or participate in board deliberations or vote on the matter relating to such complaint, provided that nothing in this paragraph shall prohibit the board from requesting that the person who is subject to the complaint present information as background or answer questions at a board meeting prior to the commencement of deliberations or voting relating thereto; and

(4) a requirement that a copy of the policy be distributed to all directors, officers and employees. For purposes of this subdivision, posting the policy on the cooperative's website or at the cooperative's offices in a conspicuous location accessible to employees are among the methods a cooperative may use to satisfy the distribution requirement.

(c) A rural electric cooperative that has adopted and possesses a whistleblower policy pursuant to federal, state or local laws that is substantially consistent with the provisions of subdivision (b) of this section shall be deemed in compliance with provisions of this section.

(d) Nothing in this section shall be interpreted to relieve any rural electric cooperative from any additional requirements in relation to internal compliance, retaliation, or document retention required by any other law or rule.

§ 20. Districts. 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 election of directors 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.

§ 21. 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 directors. When a person holding any such office ceases to be a director he shall cease to hold such office. The offices of secretary and of treasurer may be held by the same person. The board of directors 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.

§ 22. Liability of directors in certain cases. (a) Directors of a cooperative who vote for or concur in any of the following corporate actions shall be jointly and severally liable to the cooperative for the benefit of its creditors or members or the ultimate beneficiaries of its activities, to the extent of any injury suffered by such persons, respectively, as a result of such action, or, if there be no creditors or members or ultimate beneficiaries so injured, to the cooperative as a result of such action:

(1) the distribution of the cooperative's cash or property to members, directors or officers, other than a distribution permitted under sections thirty-five, sixty and sixty-one of this chapter; or

(2) the distribution of assets after dissolution of the cooperative in violation of section thirty-five of this chapter or without paying or adequately providing for all known liabilities of the cooperative.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in paragraph one or two of subdivision (a) of this section is taken shall be presumed to have concurred in the action unless the director's dissent thereto shall be entered in the minutes of the meeting, or unless the director shall submit his or her written dissent to the person acting as the secretary of the meeting before the adjournment thereof, or shall deliver or send by registered mail such dissent to the secretary of the cooperative promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. A director who is absent from a meeting of the board, or any committee thereof, at which such action is taken shall be presumed to have concurred in the action unless he shall deliver or send by registered mail his dissent thereto to the secretary of the cooperative or shall cause such dissent to be filed with the minutes of the proceedings of the board or committee within a reasonable time after learning of such action.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the action upon which the claim is asserted.

(d) Directors against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amounts paid by them to the cooperative as a result of such claims:

(1) Upon reimbursement to the cooperative of any amount of an improper distribution of the cooperative's cash or property, to be subrogated to the rights of the cooperative against members, directors or officers who received such distribution with knowledge of facts indicating that it was not authorized by this chapter, in proportion to the amounts received by them respectively.

(2) Upon payment to the cooperative of the claim of the attorney general or of any creditor by reason of a violation of subdivision (a) of this section, to be subrogated to the rights of the cooperative against any person who received an improper distribution of assets.

(e) (1) A director or officer shall not be liable under this section if, in the circumstances, the director discharged his or her duty to the cooperative in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

(2) In discharging their duties, directors and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by: (i) one or more officers or employees of the cooperative, whom the director believes to be reliable and competent in the matters presented, (ii) counsel, public accountants or other persons as to matters which the directors or officers believe to be within such person's professional or expert competence, or (iii) a committee of the board upon which they do not serve, duly designated in accordance with a

provision of the certificate of incorporation or the bylaws, as to matters within its designated authority, which committee the directors or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in subdivision (a) of this section. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons who so perform their duties shall have no liability by reason of being or having been directors or officers of the cooperative.

(f) This section shall not affect any liability otherwise imposed by law upon any director or officer.

§ 23. Action against directors and officers for misconduct. (a) An action may be brought against one or more directors or officers of a cooperative to procure a judgment for the following relief:

(1) To compel the defendant to account for his or her official conduct in the following cases:

(i) The neglect of, or failure to perform, or other violation of his or her duties in the management and disposition of cooperative assets committed to his or her charge.

(ii) The acquisition by him or herself, transfer to others, loss or waste of cooperative assets due to any neglect of, or failure to perform, or other violation of his or her duties.

(2) To set aside an unlawful conveyance, assignment or transfer of cooperative assets, where the transferee knew of its unlawfulness.

(3) To enjoin a proposed unlawful conveyance, assignment or transfer of cooperative assets, where there are reasonable grounds for belief that it will be made.

(b) An action may be brought for the relief provided in this section and in subdivision (a) of section twenty-five of this article by the attorney general, by the cooperative or, in the right of the cooperative by any of the following:

(1) A director or officer of the cooperative.

(2) A receiver, trustee in bankruptcy, or judgment creditor thereof.

(3) By one or more of the members of the cooperative.

§ 24. Nonexclusivity of statutory provisions for indemnification of directors and officers. The indemnification and advancement of expenses granted pursuant to, or provided by, this article shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in the certificate of incorporation or the by-laws or, when authorized by such certificate of incorporation or by-laws, (a) a resolution of members, (b) a resolution of directors, or (c) an agreement providing for such indemnification, provided that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. Nothing contained in this article shall affect any rights to indemnification to which corporate personnel other than directors and officers may be entitled by contract or otherwise under law.

§ 25. Authorization for indemnification of directors and officers. (a) A cooperative may indemnify any person, made, or threatened to be made, a party to an action or proceeding other than one by or in the right of the cooperative to procure a judgment in its favor, whether civil or criminal, including an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the cooperative served in any capacity at the request of the cooperative, by reason of the fact that he or she, his or her testator or intestate, was a director or officer of the corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the cooperative and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful.

(b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the cooperative or that he or she had reasonable cause to believe that his or her conduct was unlawful.

(c) A cooperative may indemnify any person made, or threatened to be made, a party to an action by or in the right of the cooperative to procure a judgment in its favor by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the cooperative or is or was serving at the request of the cooperative as a director or officer of any other corporation of any type or kind, domestic or foreign, of any partnership, joint venture, trust, employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he or she reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the cooperative, except that no indemnification under this subdivision shall be made in respect of (1) a threatened action, or a pending action which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the cooperative unless and only to the extent that the court in which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

(d) For the purpose of this action, a cooperative shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his or her duties to the cooperative also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be considered fines; and action taken or omitted by a person with respect to an employee benefit plan in the performance of such person's duties for a purpose reasonably believed by such person to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the cooperative.

§ 26. Payment of indemnification other than by court award. (a) A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in section twenty-five shall be entitled to indemnification as authorized in such section.

(b) Except as provided in subdivision (a) of this section, any indemnification under section twenty-five of this article or otherwise permitted by section twenty-four of this article, unless ordered by a court under section twenty-seven of this article, shall be made by the cooperative only if authorized in the specific case:

(1) by the board acting by a quorum consisting of directors who are not parties to such action or proceeding upon a finding that the director or officer has met the standard of conduct set forth in section twenty-five of this article or established pursuant to section twenty-four of this article, as the case may be, or,

(2) if a quorum under paragraph one of this subdivision is not obtainable or, even if obtainable, a quorum of disinterested directors so directs:

(i) By the board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in such sections has been met by such director or officer, or

(ii) By the members upon a finding that the director or officer has met the applicable standard of conduct set forth in such sections.

(c) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the cooperative in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount as, and to the extent, required by subdivision (a) of section twenty-eight of this article.

§ 27. Indemnification of directors and officers by a court. (a) Notwithstanding the failure of a cooperative to provide indemnification, and despite any contrary resolution of the board or of the members in the specific case under section twenty-six of this article, indemnification shall be awarded by a court to the extent authorized under section twenty-five of this article, and subdivision (a) of section twenty-six of this article. Application therefor may be made, in every case, either:

(1) in the civil action or proceeding in which the expenses were incurred or other amounts were paid, or

(2) to the supreme court in a separate proceeding, in which case the application shall set forth the disposition of any previous application made to any court for the same or similar relief and also reasonable cause for the failure to make application for such relief in the action or proceeding in which the expenses were incurred or other amounts were paid.

(b) The application shall be made in such manner and form as may be required by the applicable rules of court or, in the absence thereof, by direction of a court to which it is made. Such application shall be upon notice to the corporation. The court may also direct that notice be given at the expense of the cooperative to the members and such other persons as it may designate in such manner as it may require.

(c) Where indemnification is sought by judicial action, the court may allow a person such reasonable expenses, including attorneys' fees, during the pendency of the litigation as are necessary in connection with his or her defense therein, if the court shall find that the defendant has by his or her pleadings or during the course of the litigation raised genuine issues of fact or law.

§ 28. Other provisions affecting indemnification of directors and officers. (a) All expenses incurred in defending a civil or criminal action or proceeding which are advanced by the corporation under subdivision (c) of section twenty-six of this article or allowed by a court under subdivision (c) of section twenty-seven of this article shall be repaid in case the person receiving such advancement or allowance is ultimately found, under the procedure set forth in this article, not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the cooperative or allowed by the court exceed the indemnification to which he is entitled.

(b) No indemnification, advancement or allowance shall be made under this article in any circumstance where it appears:

(1) that the indemnification would be inconsistent with a provision of the certificate of incorporation, a by-law, a resolution of the board or of the members, an agreement or other proper corporate action, in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) if there has been a settlement approved by the court, that the indemnification would be inconsistent with any condition with respect to indemnification expressly imposed by the court in approving the settlement.

(c) If any express or other amounts are paid by way of indemnification, otherwise than by court order or action by the members, the cooperative shall prepare a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation, and not later than the next annual meeting of members, unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months of the date of such payment, shall mail the statement to its members of record entitled at the time to vote for the election of directors.

(d) If any action with respect to indemnification of directors and officers is taken by way of amendment of the by-laws, resolution of directors, or by agreement, then the cooperative shall, not later than the next annual meeting of members, unless such meeting is held within three months from the date of such action, and, in any event, within fifteen months from the date of such action, mail to its members of record at the time entitled to vote for the election of directors a statement specifying the action taken.

§ 29. Insurance for indemnification of directors and officers. (a) Subject to subdivision (b) of this section, a cooperative shall have power to purchase and maintain insurance:

(1) to indemnify the cooperative for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this article, and

(2) to indemnify directors and officers in instances in which they may be indemnified by the cooperative under the provisions of this article, and

(3) to indemnify directors and officers in instances in which they may not otherwise be indemnified by the cooperative under the provisions of this article provided the contract of insurance covering such directors and officers provides, in a manner acceptable to the superintendent of financial services, for a retention amount and for co-insurance.

(b) No insurance under subdivision (a) of this section may provide for any payment, other than cost of defense, to or on behalf of any director or officer:

(1) if a judgment or other final adjudication adverse to the insured director or officer establishes that his or her acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or

(2) in relation to any risk the insurance of which is prohibited under the insurance law of this state.

(c) Insurance under paragraphs one, two and three of subdivision (a) of this section may be included in a single contract or supplement thereto. Retrospective rated contracts are prohibited.

(d) The corporation shall, within the time and to the persons provided in subdivision (c) of section twenty-eight of this article, mail a statement in respect to any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to members, paid under any indemnification insurance contract.

(e) This section is the public policy of this state to spread the risk of cooperative management, notwithstanding any other general or special law of this state or of any other jurisdiction, including the federal government.

ARTICLE 3
AMENDMENT; CONSOLIDATION; MERGER; AND DISSOLUTION

§ 30. 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 chapter 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.

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

§ 32. 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 chapter and shall state: (1) the name of each consolidating cooperative and the address of its principal office; (2) the name of the new cooperative and the address of its principal office; (3) a statement that each consolidating cooperative agrees to the consolidation; (4) the names and addresses of the directors of the new cooperative; 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 chapter 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.

§ 33. Merger. Any one or more cooperatives (each of which is hereinafter designated a "merging cooperative") may merge into another cooperative (hereinafter designated the "surviving cooperative"), by complying with the following requirements:

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

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

§ 34. Effect of consolidation or merger. (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 articles of incorporation of the new cooperative; and in the case of a merger the separate existence of the merging cooperatives shall cease and the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger;

(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 or merging cooperatives shall be deemed to be transferred to and vested in the new or surviving cooperative without further act or deed;

(c) The new or surviving cooperative shall be responsible and liable for all the liabilities and obligations of each of the consolidating or merging cooperatives and any claim existing or action or proceeding pending by or against any of the consolidating or merging cooperatives may be prosecuted as if the consolidation or merger had not taken place, but the new or surviving cooperative may be substituted in its place; and

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

§ 35. Dissolution. (a) A cooperative which has not commenced business may be dissolved by filing in the department 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 the total members of the cooperative, 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 filed in the department of state. Upon the filing of the certificate and affidavit in the department 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 in the department of state. The board of directors 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. The board of directors shall wind up and settle the affairs of the cooperative, collect sums owing to it, liquidate its property and assets, pay and discharge its debts, obligations and liabilities, 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 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 in the department 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 directors 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 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 in the department 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.

ARTICLE 4

CONVERSION OF DOMESTIC CORPORATIONS;
AUTHORIZATION TO FOREIGN CORPORATIONS

§ 40. Conversion of existing domestic 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 chapter with the same effect as if originally organized under this chapter:

(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 chapter and shall state: (1) the name of the corporation and the address of its principal office prior to its conversion into a cooperative; (2) the statute or statutes under which it was organized; (3) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this chapter; (4) its name as a cooperative; (5) the address of the principal office of the cooperative; (6) the names and addresses of the directors of the cooperative; 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 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 of such articles. The articles of conversion shall be deemed to be the articles of incorporation of the cooperative.

§ 41. Foreign corporations. Any foreign non-profit or cooperative corporation supplying or authorized to supply electric energy and owning or operating electric transmission or distribution lines in an adjacent state may construct or acquire extensions of such lines in this state within an area no point of which is more than ten miles from the boundary line of this state and operate such extensions, provided that any such corporation shall, before constructing or operating such extensions, by an instrument executed and acknowledged on its behalf by its president or vice-president, under its seal attested by its secretary, and filed in the department of state, designate the secretary of state its agent to accept service of process on its behalf. Thereafter, such corporation shall have all the rights, powers, privileges and immunities of a cooperative, and shall be subject to the provisions of this chapter. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered mail to such corporation at the address thereof specified in the aforesaid instrument.

ARTICLE 5
FILING AND FEES

§ 50. Filing of articles. Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and acknowledged and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be filed in the department of state. The secretary of state shall, upon the payment of the fees as in this chapter provided, index such articles. Upon the filing of such articles, the incorporation, amendment, consolidation, merger, 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 thirty-five of this chapter.

§ 51. Fees. The department of state shall charge and collect for:

(a) Filing articles of incorporation, forty dollars;

(b) Filing articles of amendment, twenty-five dollars;

(c) Filing articles of consolidation or merger, twenty-five dollars;

(d) Filing articles of conversion, twenty-five dollars;

(e) Filing certificate of election to dissolve, five dollars;

(f) Filing articles of dissolution, five dollars;

(g) Filing certificate of change of principal office, fifteen dollars; and

(h) Filing by foreign corporation of instrument of designation for service of process, two dollars.

ARTICLE 6

GENERAL PROVISIONS GOVERNING PROPERTY AND AFFAIRS

§ 60. Patronage capital contributions, allocations, and retirements. (a) Each cooperative's by-laws shall, unless otherwise determined by agreement of the members, provide for patronage capital allocations and retirements in the manner provided by this section. Agreement by the members for purposes of this section shall mean member approval of by-law provisions or by a majority vote of the members voting at a duly called meeting. Any matter set forth in this section which is subject to determination of the board of directors shall be determined in the exercise of such board of director's business judgment.

(b) Patronage capital shall be determined by a cooperative on an annual basis and shall be the excess, if any, of amounts received or receivable by such cooperative from furnishing electricity over such cooperative's operating costs and expenses properly chargeable against furnishing electricity, as determined using such accounting method or methods as agreed upon by the members. Costs and expenses chargeable against furnishing electricity shall include:

(1) expenses of the operation and maintenance of its facilities during such fiscal year;

(2) interest obligations of the cooperative coming due in such fiscal year;

(3) depreciation and other expenses 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 directors;

(4) expenses to provide a reasonable reserve for working capital as determined by the board of directors;

(5) expenses to provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness 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;

(6) expenses to provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative; and

(7) all other costs and expenses from and directly related to the furnishing of electric energy to the patrons.

(c) "Patron", as referred to in subdivisions (b) through (h) of this section, shall be defined as (1) a member and (2) a nonmember to whom the cooperative furnishes electric energy or other services on a patronage basis pursuant to bylaws or as agreed upon by the members.

(d) On an annual basis, patronage capital determined under subdivision (b) of this section shall be allocated on the books of the cooperative to each patron having furnished such capital and shall be based upon and in proportion to:

(1) the revenue from each patron or group of similar patrons to the cooperative's total revenue;

(2) the contribution of each patron or group of similar patrons to the cooperative's overall patronage capital;

(3) the kilowatt-hour usage of each patron or group of similar patrons to the total kilowatt-hour usage of all patrons;

(4) any other method which is agreed upon by the members; or

(5) any combination of paragraphs one, two, three and/or four of this subdivision as agreed upon by the members.

(e) "Retirement" in reference to patronage capital shall mean the redemption and payment in cash or other property, as provided by subdivision (f) of this section, of patronage capital to the cooperative patrons or former patrons to whom it has previously been allocated. The allocation of patronage capital to a patron's patronage capital account shall in no event create a vested right to the retirement of the amount so allocated. The board of directors of a cooperative may, in its discretion, retire patronage capital allocated on the books of the cooperative when it determines such retirement is consistent with sound business and management practices and the long-term financial stability of the cooperative. Patronage capital shall be retired according to the method chosen by the members and at the time the board of directors shall determine as a matter of its discretion. However, patronage capital may be retired in advance of the date when it would otherwise be retired under the previous sentence in such circumstances and upon such conditions as are agreed upon by the members, including, but not limited to, upon a patron's or former patron's death, the termination of a patron or former patron's electric service, or a patron or former patron's filing for bankruptcy. In the event of such early retirement of patronage capital, the amount of patronage capital allocated to the patron or former patron on the cooperative's books may be discounted for purposes of its retirement in accordance with such method as is agreed upon by the members. The difference between the discounted amount and the patron's or former patron's patronage capital may be retained by the cooperative as part of its net savings in a manner determined by the board of directors.

(f) When the board of directors of the cooperative has determined, pursuant to subdivision (e) of this section, that patronage capital shall be retired, the retirement may be accomplished by a bill credit, by the mailing of payment or notice of payment to the patron's or former patron's last known address of record on file with the cooperative, or by such other method as the board of directors shall determine to be appropriate. No interest shall be paid or payable by the cooperative on any patronage capital. The amount of patronage capital being retired may be reduced by any amount owed to the cooperative by the patron or former patron.

(g) A cooperative may adopt such procedures for the assignment and contribution of unclaimed patronage capital to the cooperative as are agreed upon by its members. Such procedures may include providing that patronage capital which has not been claimed by a patron or former patron, after reasonable efforts to locate said patron or former patron, shall be added to the net savings of the cooperative. Mailing of a check or notice of the availability of a check to the last known address of a patron or former patron by first class mail and publication of the list of patrons or former patrons having unclaimed patronage capital on the website and/or newsletter of the cooperative for a period of three years shall be deemed reasonable effort to locate said patron or former patron.

(h) In the event that the cooperative should engage in the business of furnishing goods and services other than electric energy, all amounts received and receivable therefrom which are in excess of costs and expenses properly chargeable against the furnishing of such goods or services shall, insofar as permitted by law, bylaws, or by approval of the members, be prorated annually on a patronage basis and allocated to each member and shall be retired to said member according to the method chosen by the members and at the time that the board of directors shall determine as a matter of its discretion. Nothing in this section, however, prevents a cooperative from furnishing goods and services other than electric energy on a non-patronage basis to non-members; the net earnings of which may be retained as part of its net savings.

(i) With respect to any cooperative formed under this chapter that is exempt from federal income taxation under paragraph twelve of subsection (c) of section five hundred one of the internal revenue code of nineteen eighty-six, as amended, or any corresponding provision of future federal tax law, or any cooperative which would otherwise qualify for said exemption but for having less than eighty-five percent (or whatever threshold may be specified in the future for said purpose by the internal revenue code) of income from members, this section shall in all events be limited to and interpreted in a manner which is compliant with the requirements of exemption under such internal revenue code section, and any agreement by the members or determination by the board of directors under this section with respect to the subject matter hereof shall also be limited to and interpreted in a manner which is compliant with such internal revenue code section.

§ 61. Disposition of property. (a) The board of directors of a cooperative shall have full power and authority, without authorization by the members thereof, to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust of, or the pledging or encumbering of, any or all of the property, assets, rights, privileges, licenses, franchises and permits of the cooperative, whether acquired or to be acquired, and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of directors shall determine. Any such mortgage or mortgages or deed or deeds of trust or other instruments shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law.

(b) A cooperative may not otherwise sell, mortgage, lease or otherwise dispose of or encumber all or a substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the affirmative vote of not less than two-thirds of the total members of the cooperative.

§ 62. 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.

§ 63. Recordation of mortgages; effect thereof. In case of conflict between this section and article nine of the uniform commercial code, the provisions of this section shall control. Any mortgage, deed of trust or other instrument executed by a cooperative or foreign corporation doing business in this state pursuant to this chapter, which affects real and personal property and which is recorded in the real property records in any county in which such property is located or is to be located, shall have the same force and effect as if the security interest created by such mortgage in the personal property thereby affected, had been perfected by filing in accordance with section 9--501 of the uniform commercial code. All after-acquired property of such cooperative or foreign corporation described or referred to as being mortgaged or pledged in any such 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 such 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.

The security interest in personal property created by any such mortgage, deed of trust or other instrument shall, after recordation thereof, continue perfected and of record without the filing of any continuation statement as required by section 9--515 of the uniform commercial code.

§ 64. Construction standards. Construction of electric lines by a cooperative shall, as a minimum requirement, comply with the standards of the national electric safety code in effect at the time of such construction.

§ 65. Directors, officers or members as notaries. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party, by reason of being an officer, director or member of such cooperative.

§ 66. License fee in lieu of all franchise, excise, income, corporation and sales and compensating use taxes. Each cooperative and foreign corporation doing business in this state pursuant to this chapter shall pay annually, on or before the first day of July, to the state tax commission, a fee of ten dollars, but shall be exempt from all other franchise, excise, income, corporation and sales and compensating use taxes whatsoever. The exemption from the sales and compensating use taxes provided by this section shall not apply to the taxes imposed pursuant to section eleven hundred seven or eleven hundred eight of the tax law. Nothing contained in this section shall be deemed to exempt such corporations from collecting and paying over sales and compensating use taxes on retail sales of tangible personal property and services made by such corporations to purchasers required to pay such taxes imposed pursuant to article twenty-eight or authorized pursuant to the authority of article twenty-nine of the tax law. Such annual fee shall not be payable after January first, two thousand twenty.

§ 67. Exemption from jurisdiction of public service commission and from the provisions of the public service law. Cooperatives and foreign corporations doing business in this state pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the public service commission of this state and shall not be subject to the provisions of the public service law. Each cooperative, however, shall file with the public service commission an annual report verified by the oath of the president, vice-president, treasurer, secretary, general manager, or receiver, if any. The report shall show in detail

(a) The number of its members;

(b) The amount of its bonded indebtedness and other outstanding indebtedness;

(c) Its receipts and expenditures during the preceding year;

(d) The amount paid in reduction of its indebtedness and as interest upon its indebtedness;

(e) The names of its officers and the aggregate amount paid as salaries to them and the amount paid as wages to its employees;

(f) The location of its plant or plants and system, with a full description of its property and franchises.

§ 68. Exemption of securities. The provisions of article twenty-three-a of the general business law shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative or foreign corporation doing business in this state pursuant to this chapter to United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of said article twenty-three-a shall not apply to the issuance of membership certificates by any cooperative or any such foreign corporation.

ARTICLE 7
CONSTRUCTION; SEPARABILITY; EFFECTIVE DATE

§ 70. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

§ 71. Separability. If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

§ 72. Effective date. This chapter shall take effect immediately.