

SENATE, No. 2180

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MAY 16, 2016

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

“New Jersey Rural Electric Cooperative Act.”

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning rural electric cooperatives, supplementing Title
2 15A of the New Jersey Statutes, and amending P.L.1945, c.162.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) Sections 1 through 19 of this act shall be
8 known and may be cited as the "New Jersey Rural Electric
9 Cooperative Act."

10

11 2. (New section) As used in P.L. , c. (C.)(pending
12 before the Legislature as this bill):

13 "Acquire" means to construct or by purchase, lease, devise, gift,
14 or other mode of acquisition.

15 "Board" means the board of directors of a rural electric
16 cooperative.

17 "Federal agency" means any department, administration,
18 commission, board, bureau, office, establishment, agency, authority,
19 or instrumentality of the United States of America.

20 "Member" means the incorporators of a rural electric cooperative
21 and each person thereafter lawfully admitted to membership therein.

22 "Obligations" means bonds, notes, debentures, interim
23 certificates, or receipts, and all other evidence of indebtedness,
24 whether secured or unsecured, issued by a rural electric cooperative.

25 "Person" means any individual or entity but shall not include any
26 Federal agency, state, or any political subdivision thereof.

27 "Rural area" means any area included within the boundaries of
28 any municipality that, as of January 1, 1995, had a population of
29 30,000 inhabitants or less and a population density less than 4,000
30 persons per square mile, according to the latest federal decennial
31 census, including both the farm and nonfarm population thereof.

32 "Rural electric cooperative" or "cooperative" means a nonprofit
33 corporation entitled to the rights, benefits, and protections
34 established under P.L. , c. (C.)(pending before the
35 Legislature as this bill).

36

37 3. (New section) A rural electric cooperative which has
38 continuously operated since January 1, 1995 and thereafter and
39 organized as a rural electric cooperative under the general
40 corporation laws of this State, is hereby recognized and affirmed as
41 a rural electric cooperative entitled to the rights, benefits, and
42 protections established under P.L. , c. (C.) (pending
43 before the Legislature as this bill), if formed for any of the
44 following purposes:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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- 1 a. Furnishing of electric energy to persons who shall be
2 members of the cooperative in rural areas who are not receiving
3 service from an electric public utility;
- 4 b. Assisting in the wiring of the premises of persons in rural
5 areas who are members of the cooperative or the acquisition,
6 supply, or installation of electrical or plumbing equipment therein;
7 and
- 8 c. Furnishing of electric energy, wiring facilities, electrical
9 equipment, or services in rural areas to the members thereof.
10
- 11 4. (New section) The articles of incorporation of a rural
12 electric cooperative existing under P.L. , c. (C.)
13 (pending before the Legislature as this bill) shall state:
- 14 a. The name of the cooperative, which shall include the words
15 "Rural Electric Cooperative" and shall not be confusingly similar to
16 the name of any other corporation in this State;
- 17 b. The purposes for which the cooperative is formed;
- 18 c. The names and addresses of the incorporators who shall
19 serve as directors, and manage the affairs, of the cooperative until
20 its first annual meeting of members or until their successors are
21 elected and qualified;
- 22 d. The number of directors, not less than three, to be elected at
23 the annual meetings of members;
- 24 e. The address, including street and number, if any, of the
25 cooperative's registered office;
- 26 f. The period of duration of the cooperative, which may be
27 perpetual;
- 28 g. The terms and conditions upon which persons will be
29 admitted to, and retain, membership in the cooperative, provided
30 that, if expressly so stated, the determination of these matters may
31 be reserved to the directors by the bylaws; and
- 32 h. Other provisions, not inconsistent with law, which the
33 incorporators or directors choose to insert for the regulation of the
34 business and affairs of the cooperative.
35
- 36 5. (New section) The words "Rural Electric Cooperative" shall
37 not be used in the corporate name of any corporation organized for
38 profit or not-for-profit in this State other than a cooperative existing
39 under P.L. , c. (C.) (pending before the Legislature as
40 this bill).
41
- 42 6. (New section) All of the provisions of law applicable to
43 rural electric cooperatives shall be construed liberally. The
44 enumeration of any object, purpose, power, manner, method, or
45 thing shall not be deemed to exclude like or similar objects,
46 purposes, powers, manners, methods, or things.

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1 7. (New section) A rural electric cooperative existing under
2 P.L. , c. (C.) (pending before the Legislature as this
3 bill) shall have the power:

4 a. To generate, manufacture, purchase, acquire, and accumulate
5 electric energy and to transmit, distribute, sell, furnish, and dispose
6 of that electric energy to its members; and to construct, erect,
7 purchase, lease as lessee and, in any manner, acquire, own, hold,
8 maintain, operate, sell, dispose of, lease as lessor, exchange, and
9 mortgage plants, buildings, works, machinery, supplies, equipment,
10 apparatus, and transmission and distribution lines or systems
11 necessary, convenient, or useful;

12 b. To assist its members to wire their premises and install
13 therein electrical and plumbing fixtures, machinery, supplies,
14 apparatus, and equipment of all kinds and character and, in
15 connection therewith and for those purposes, to purchase, acquire,
16 lease, sell, distribute, install, and repair electrical and plumbing
17 fixtures, machinery, supplies, apparatus, and equipment of all kinds
18 and character;

19 c. To receive, acquire, endorse, pledge, hypothecate, and
20 dispose of notes, bonds, and other evidences of indebtedness;

21 d. To use any highway or any right-of-way, easement, or other
22 similar property right owned or held by the State or any political
23 subdivision thereof, in connection with the acquisition,
24 construction, improvement, operation, or maintenance of its lines;

25 e. To have and exercise the power of eminent domain for the
26 same purposes and in the same manner as electric public utilities
27 within the State;

28 f. To fix, regulate, and collect rates, fees, rents, or other
29 charges for electric energy and any other facilities, supplies,
30 equipment, or services furnished by the cooperative;

31 g. To accept gifts or grants of money, services, or property,
32 real, or personal; and

33 h. To do and perform, either for itself or its members or for any
34 other cooperative, or for the members thereof, all acts necessary and
35 to have and exercise any and all powers as may be necessary,
36 convenient, or appropriate to effectuate the purpose for which the
37 cooperative is incorporated.

38

39 8. (New section) The power to make, alter, or repeal the
40 bylaws of a rural electric cooperative established pursuant to
41 P.L. , c. (C.) (pending before the Legislature as this
42 bill) shall be vested in the board of directors of the cooperative.
43 The bylaws may contain any provisions for the regulation and
44 management of the affairs of the cooperative not inconsistent with
45 law or the articles of incorporation.

46

47 9. (New section) All persons in rural areas served, or proposed
48 to be served, by a rural electric cooperative shall be eligible for

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1 membership in the cooperative upon terms as the cooperative's
2 bylaws may specify. The bylaws shall constitute a contract between
3 the cooperative and each of its members.

4

5 10. (New section) A member shall not be liable for the debts of
6 a rural electric cooperative, but nothing in P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall be construed to
8 relieve any member from the payment of any debt due by the
9 member to the cooperative.

10

11 11. (New section) When a member of a rural electric
12 cooperative has paid a membership fee, submitted a membership
13 application, and complied with all remaining requirements for
14 membership as determined by the cooperative, a certificate of
15 membership shall be issued to the member. Memberships in the
16 cooperative and the certificates thereof shall be nontransferable.
17 The certificate of membership shall be surrendered to the
18 cooperative upon the resignation, expulsion, or death of the
19 member.

20

21 12. (New section) a. The business and affairs of a rural electric
22 cooperative shall be managed under the direction of a board of not
23 less than three directors who shall be natural persons of full age.
24 All directors shall be members of the cooperative.

25 b. Any vacancy occurring in the board of directors of the
26 cooperative shall be filled by the remaining directors in accordance
27 with the bylaws of the cooperative.

28

29 13. (New section) a. An annual meeting of the members of a
30 rural electric cooperative shall be held at a time as may be provided
31 in the bylaws.

32 b. Special meetings of the members may be called by:

33 (1) the president;

34 (2) the board of directors;

35 (3) the members as evidenced by a petition signed by not less
36 than one-tenth of all of the members; or

37 (4) other officers or persons as may be provided in the bylaws.

38 c. Written notice of every meeting of members shall be given
39 in the manner prescribed in the cooperative's bylaws, but in no
40 event shall written notice be given more than 30 days or less than
41 10 days before the date of the meeting. If mailed, the notice shall
42 be deemed to be delivered when deposited in the United States mail
43 in a sealed envelope, addressed to the member at the member's
44 address as it appears on the records of the cooperative, with postage
45 thereon pre-paid.

46

47 14. (New section) If the total number of members of a rural
48 electric cooperative shall exceed 1,000, then at least 100 of the

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1 members present in person shall constitute a quorum for the
2 transaction of business at all meetings of members. In the case of a
3 joint membership, the presence at a meeting of either joint member
4 or both shall be regarded as the presence of one member. If less
5 than a quorum is present at any meeting, a majority of those
6 members present in person may adjourn the meeting from time to
7 time without further notice.

8

9 15. (New section) Each member of a rural electric cooperative
10 present shall be entitled to only one vote on each matter submitted
11 to a vote at a meeting of members. All questions shall be decided
12 by a vote of a majority of members voting thereon in person except
13 as otherwise provided by law, the articles of incorporation, or the
14 bylaws.

15

16 16. (New section) a. A rural electric cooperative shall be
17 operated without profit to its members, but the rates, fees, rents, or
18 other charges for electric energy, and any other facilities, supplies,
19 equipment, or services furnished by the cooperative shall be
20 sufficient at all times:

21 (1) to pay all operating and maintenance expenses necessary or
22 desirable for the prudent conduct of its business and the principal of
23 and interest on the obligations issued or assumed by the cooperative
24 in the performance of the purpose for which it was organized; and

25 (2) for the creation of reserves.

26 b. The revenues of the cooperative shall be devoted, first, to the
27 payment of operating and maintenance expenses and the principal
28 and interest on outstanding obligations and, thereafter, to the
29 reserves for improvement, new construction, depreciation, and
30 contingencies as the board may, from time to time, prescribe.

31 c. (1) Revenues not required for the purposes set forth in sub-
32 section b. of this section shall be returned, from time to time, to the
33 members on a pro rata basis, according to the amount of business
34 done with each member during the period, either in cash, in
35 abatement of current charges for electric energy, or otherwise, as
36 the board determines, but the return may be made by way of general
37 rate reduction to members if the board so elects. The allocation and
38 retirement of any capital credits shall be made by the directors in
39 accordance with the bylaws of the cooperative.

40 (2) Any capital credits that remain unclaimed at the expiration
41 of a period of three years from the date of member notification by
42 the cooperative to the member at the member's last known address,
43 as shown on the records of the cooperative, shall be retained by the
44 cooperative for its general corporate purposes.

45

46 17. (New section) a. Any two or more rural electric
47 cooperatives may merge, consolidate, or divide, but only if the
48 surviving or resulting entity is a rural electric cooperative existing

1 under P.L. , c. (C.) (pending before the Legislature as
2 this bill) or under the laws of a neighboring state. Every merger,
3 consolidation, or division of a cooperative shall be proposed by the
4 adoption by the board of directors of a resolution approving the
5 plan of merger, consolidation, or division and directing that the plan
6 be submitted to a vote of the members entitled to vote thereon at a
7 regular or special meeting of the members.

8 b. A rural electric cooperative may sell, lease, lease-sell,
9 exchange, or otherwise dispose of all or substantially all of its
10 assets, other than in the ordinary course of business, only when
11 authorized by the affirmative vote of two-thirds of all the members
12 of the cooperative.

13 (1) The plan of asset transfer presented shall set forth the terms
14 and conditions of the sale, lease, exchange, or other disposition, or
15 may authorize the board of directors of the cooperative to fix any
16 terms and conditions, including the consideration to be received by
17 the cooperative therefor.

18 (2) Prior to the submission for consideration by the members of
19 the cooperative, the board of directors of the cooperative shall first
20 give all other rural electric cooperatives within the State of New
21 Jersey and a neighboring state an opportunity to submit competing
22 proposals. That opportunity shall be presented in the form of a
23 written notice to those cooperatives, which notice shall be attached
24 to a copy of the proposal which the cooperative has already
25 received. Those cooperatives shall be given not less than 30 days
26 during which to submit competing proposals, and the actual
27 minimum period within which proposals are to be submitted shall
28 be stated in the written notice given to them.

29 (3) Within 30 days after the expiration of the notice period set
30 by the board of directors of a cooperative under paragraph (2) of
31 this subsection, written notice of the special meeting to consider
32 and take action on the plan of asset transfer and expressing in detail
33 each of the proposals shall be given to each member of the
34 cooperative. The special meeting shall not be held sooner than 30
35 days after giving that notice to the members.

36 (4) After a plan of asset transfer has been authorized by the
37 members of a cooperative, the board of directors, in its discretion,
38 may either pursue or abandon the sale, lease, lease-sale, exchange,
39 or other disposition, subject to the rights of third parties under any
40 contracts relating thereto, without further action or approval by the
41 members.

42
43 18. (New section) A rural electric cooperative may dissolve
44 only when authorized by the affirmative vote of two-thirds of all the
45 members of the cooperative. Any assets remaining after all
46 liabilities or obligations of the cooperative have been satisfied or
47 discharged upon dissolution shall be distributed pro rata among the
48 members of the cooperative at the time of the filing of the

1 certificate of dissolution in accordance with the cooperative's
2 bylaws.

3
4 19. (New section) Whenever any rural electric cooperative
5 subject to P.L. , c. (C.) (pending before the
6 Legislature as this bill) has borrowed money from any federal
7 agency, the obligations issued to secure the payment of the money
8 shall be exempt from the provisions of the "Uniform Securities Law
9 (1997)," P.L.1967, c.93 (C.49:3-47 et seq.) nor shall the provisions
10 of P.L.1967, c.93 (C.49:3-47 et seq.) apply to the issuance of
11 membership certificates by that cooperative.

12
13 20. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to
14 read as follows:

15 3. The following corporations shall be exempt from the tax
16 imposed by **[this act]** P.L.1945, c.162 (C.54:10A-1 et seq.):

17 (a) Corporations subject to a tax assessed upon the basis of
18 gross receipts, other than the alternative minimum assessment
19 determined pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),
20 and corporations subject to a tax assessed upon the basis of
21 insurance premiums collected;

22 (b) Corporations which operate regular route autobus service
23 within this State under operating authority conferred pursuant to
24 R.S.48:4-3, provided, however, that **[such]** the corporations shall
25 not be exempt from the tax on net income imposed by section 5(c)
26 of P.L.1945, c.162 (C.54:10A-5);

27 (c) Railroad, canal corporations, production credit associations
28 organized under the Farm Credit Act of 1933, or agricultural
29 cooperative associations incorporated or domesticated under or
30 subject to chapter 13 of Title 4 of the Revised Statutes and exempt
31 under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal
32 Internal Revenue Code (26 U.S.C. s.521);

33 (d) Cemetery corporations not conducted for pecuniary profit or
34 any private shareholder or individual;

35 (e) Nonprofit corporations, associations or organizations
36 established, organized or chartered, without capital stock, under the
37 provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A
38 of the New Jersey Statutes or under a special charter or under any
39 similar general or special law of this or any other state, and not
40 conducted for pecuniary profit of any private shareholders or
41 individual;

42 (f) Sewerage and water corporations subject to a tax under the
43 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) or any statute or
44 law imposing a similar tax or taxes;

45 (g) Nonstock corporations organized under the laws of this State
46 or of any other state of the United States to provide mutual
47 ownership housing under federal law by tenants, provided,
48 however, that the exemption hereunder shall continue only so long

1 as the corporations remain subject to rules and regulations of the
2 Federal Housing Authority and the Commissioner of the Federal
3 Housing Authority holds membership certificates in the
4 corporations and the corporate property is encumbered by a
5 mortgage deed or deed of trust insured under the National Housing
6 Act (48 Stat.1246) as amended by subsequent Acts of Congress. In
7 order to be exempted under this subsection, corporations shall
8 annually file a report on or before August 15 with the
9 commissioner, in the form required by the commissioner, to claim
10 such exemption, and shall pay a filing fee of **[\$25.00]** \$25;

11 (h) Corporations not for profit organized under any law of this
12 State where the primary purpose thereof is to provide for its
13 shareholders or members housing in a retirement community as the
14 same is defined under the provisions of the "Retirement Community
15 Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.);

16 (i) Corporations which are licensed as insurance companies
17 under the laws of another state, including corporations which are
18 surplus lines insurers declared eligible by the Commissioner of
19 Banking and Insurance pursuant to section 11 of P.L.1960, c.32
20 (C.17:22-6.45) to insure risks within this State; **[and]**

21 (j) (1) Municipal electric corporations that were in existence as
22 of January 1, 1995 provided that all of their income is from sales,
23 exchanges, or deliveries of electricity derived from customers using
24 electricity within their municipal boundaries; and (2) Municipal
25 electric utilities that were in existence as of January 1, 1995
26 provided that all of their income is from sales, exchanges, or
27 deliveries of electricity derived from customers using electricity
28 within their franchise area existing as of January 1, 1995. If a
29 municipal electric corporation derives income from sales,
30 exchanges, or deliveries of electricity from customers using the
31 electricity outside its municipal boundaries, **[such]** the municipal
32 electric corporation shall be subject to the tax imposed by **[this act]**
33 P.L.1945, c.162 (C.54:10A-1 et seq.) on all income. If a municipal
34 electric utility derives income from sales, exchanges or deliveries of
35 electricity from customers using electricity outside its franchise
36 area existing as of January 1, 1995, **[such]** the municipal electric
37 utility shall be subject to the tax imposed by **[the act]** P.L.1945,
38 c.162 (C.54:10A-1 et seq.) on all income; and

39 (k) A rural electric cooperative which is exclusively owned and
40 controlled by the members it serves that was in existence as of
41 January 1, 1995 and is subject to the provisions of P.L. _____,
42 c. _____ (C. _____) (pending before the Legislature as this bill),
43 provided that all of the cooperative's income from the sale and
44 distribution of electricity is derived from sales, exchanges, or
45 deliveries of electricity to members using electricity within its
46 franchise area existing as of January 1, 1995. If a rural electric
47 cooperative derives income from sales, exchanges, or deliveries of
48 electricity from customers using electricity outside its franchise

1 area existing as of January 1, 1995, that rural electric cooperative
2 shall be subject to the tax imposed by P.L.1945, c.162 (C.54:10A-1
3 et seq.) on income derived from those sales, exchanges, or
4 deliveries.

5 (cf: P.L.2002, c.40, s.2)

6

7 21. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 Rural electric cooperatives (cooperative) are operated as non-
13 profit, consumer-owned entities which elect their board of directors
14 from their membership and return all revenues in excess of the cost
15 of furnishing electric service to their members in the form of capital
16 credits.

17 This bill, entitled the “New Jersey Rural Electric Cooperative
18 Act,” validates the establishment, through statutory rules, for the
19 formation and organization of any cooperative which has
20 continuously operated since January 1, 1995. The bill contains
21 provisions for the cooperative’s articles of incorporation, purposes,
22 powers, membership requirements, bylaws, and governance,
23 including the ability to dissolve. Further, under the bill, any two or
24 more cooperatives may merge, consolidate, or divide, but only if the
25 surviving or resulting entity is a cooperative existing under the bill
26 or under the laws of a neighboring state.

27 Further, the bill exempts from the State’s corporation business
28 tax liability a cooperative’s income derived from the sales,
29 exchanges, or deliveries of electricity to customers using electricity
30 within its franchise area, provided that the cooperative derives its
31 entire income from electricity sales, exchanges, or deliveries to
32 customers using electricity within its franchise area as the
33 cooperative existed on that date.