

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

A Bill

Act 946 of 1999
HOUSE BILL 2041

5 By: Representative Horn
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE RURAL
10 TELEPHONE COOPERATIVE ACT; AND FOR OTHER PURPOSES."

Subtitle

11
12 "TO AMEND VARIOUS SECTIONS OF THE RURAL
13 TELEPHONE COOPERATIVE ACT."
14
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code 23-17-204 is amended to read as follows:
20 "23-17-204. Purpose of cooperative.

21 Cooperative nonprofit membership corporations either with or without
22 capital stock may be organized under this subchapter for the purpose of
23 furnishing telecommunications service in rural areas and other services to the
24 widest practicable number of users of ~~the service~~ such services."
25

26 SECTION 2. Arkansas Code 23-17-214 is amended to read as follows:
27 "23-17-214. Bylaws.

28 (a)(1) The power to make, alter, amend, or repeal the bylaws of the
29 cooperative shall be vested in the board of directors, subject to amendment by
30 the members at any annual meeting.

31 (2) ~~The board shall not have power to change, alter, or amend any~~
32 ~~provisions of the bylaws adopted by the members. The power to amend or alter~~
33 ~~such provisions is vested in the members. The board shall not change, alter~~
34 ~~or amend any provision of the bylaws adopted by the members except upon a~~
35 ~~unanimous vote of the directors in favor of such change, alteration, or~~
36 ~~amendment. In the event the directors shall change, alter or amend a bylaw~~

1 provision pursuant to this section, such provision shall be submitted to the
 2 members of the cooperative at their next annual or special meeting. If the
 3 members do not, at such meeting, vote to ratify the directors' action in
 4 changing, altering or amending the bylaw provision in question, the bylaw
 5 provision in question will be deleted from the bylaws, and the bylaw in
 6 question shall revert, effective the day after the members' meeting, to the
 7 wording which was in place immediately before the directors changed, altered
 8 or amended such provision.

9 (b) The bylaws may contain any provisions for the regulation and
 10 management of the affairs of the cooperative not inconsistent with law or the
 11 articles of incorporation.”

12
 13 SECTION 3. Arkansas Code 23-17-215 is amended to read as follows:

14 “23-17-215. Qualifications of members.

15 ~~(a) All persons proposed to be served by a cooperative shall be~~
 16 ~~eligible for membership in the cooperative.~~

17 ~~(b) No person shall become a member of a cooperative unless that person~~
 18 ~~shall be a subscriber for local telecommunications service supplied by the~~
 19 ~~cooperative when available. Subject to the provisions of the Rural~~
 20 Telecommunications Cooperative Act, the articles of incorporation of a
 21 cooperative, and the bylaws of a cooperative, a cooperative's board shall have
 22 the authority to determine the qualifications for membership in the
 23 cooperative and to establish and from time to time modify procedures pursuant
 24 to which persons may become or remain members, as well as procedures for a
 25 person's membership in the cooperative to be terminated. Notwithstanding the
 26 foregoing, no person may become or remain a member of a cooperative who does
 27 not subscribe to telecommunications service supplied by the cooperative.”

28
 29 SECTION 4. Arkansas Code 23-17-216 is amended to read as follows:

30 ~~“23-17-216. Certificate of membership – Refund of fees or patronage~~
 31 ~~profits Membership fees and capital credits.~~

32 (a) When a member of a cooperative has paid the membership fee in full,
 33 a certificate of membership shall be issued to the member.

34 (b) Memberships in the cooperative and the certificates thereof shall
 35 be nontransferable and nonassignable.

36 (c) Membership may be cancelled upon the resignation, expulsion,

1 dissolution, change in ownership, or death of the member or by the death or
 2 divorce of either party to a joint membership, if joint memberships are
 3 provided for in the bylaws.

4 (d) ~~The membership fee shall not be refunded nor shall patronage~~
 5 ~~profits be paid to a member upon his ceasing to be such, while the cooperative~~
 6 ~~has outstanding and unpaid obligations in excess of sixty percent (60%) of its~~
 7 ~~net assets, with the exception that the board of directors may in their~~
 8 ~~discretion authorize a refund of membership fees and capital credits, if~~
 9 ~~earned, for deceased members.~~

10 (e) Cooperatives shall not pay capital credits to a member, former
 11 member, patron, or former patron while the cooperative has outstanding and
 12 unpaid obligations in excess of sixty percent (60%) of its net assets. The
 13 board of directors may, in their discretion, authorize payment of any capital
 14 credits allocated to deceased former members or patrons as provided in the
 15 bylaws. If the outstanding and unpaid obligations of the cooperative are less
 16 than sixty percent (60%) of the cooperative's net assets based upon the
 17 cooperative's consolidated balance sheet as of the close of the cooperative's
 18 most recently audited fiscal year, the board shall have the discretion to pay
 19 previously allocated capital credits in any amount or manner the board deems
 20 appropriate."

21
 22 SECTION 5. Arkansas Code 23-17-217(d) is amended to read as follows:

23 "(d) Written or printed notice, containing the place, day, and hour of
 24 the meeting of members and, in case of special meeting, the purpose for which
 25 the meeting is called, shall be delivered not less than ~~ten (10)~~ five (5) days
 26 nor more than ~~thirty (30)~~ sixty (60) days before the date of the meeting,
 27 either personally or by mail, to each member of record entitled to vote as a
 28 member at the meeting. If mailed, the notice shall be deemed to be delivered
 29 when deposited in the United States mails, with postage prepaid, in a sealed
 30 envelope addressed to the member at his address as it appears on the records
 31 of the cooperative."
 32

33 SECTION 6. Arkansas Code 23-17-217(f)(1) is amended to read as follows:

34 "(f)(1) Unless the bylaws prescribe the presence of a greater
 35 percentage of the number of members for a quorum, a quorum for the transaction
 36 of business at all meetings of the members of the cooperative shall be ten

1 percent (10%) of all members, and, of a cooperative having more than five
 2 hundred (500) members, a quorum shall be not less than fifty (50) members.
 3 However, in the event a cooperative is unable to attain a quorum ~~for five (5)~~
 4 ~~consecutive years~~ at its annual meeting, the board of directors in the next
 5 annual meeting ~~notice~~ or in a notice of special meeting may declare that the
 6 number of members present at such meeting shall constitute a quorum for the
 7 purpose of conducting ~~the business prescribed in said notice.~~"

8
 9 SECTION 7. Arkansas Code 23-17-218(d) is amended to read as follows:

10 "(d) The directors shall be members of the cooperative and shall be
 11 entitled to such compensation, benefits, and reimbursement for expenses
 12 actually and necessarily incurred, ~~by them as may be provided in the bylaws.~~"

13
 14 SECTION 8. Arkansas Code 23-17-219(b)(2) is amended to read as follows:

15 "(2) Instead of electing all of the directors annually, the bylaws may
 16 provide for staggered terms of no longer than ~~six (6)~~ nine (9) years for each
 17 director if approved at a meeting of the members."

18
 19 SECTION 9. Arkansas Code 23-17-225(a) is amended to read as follows:

20 "(a) Any cooperative may dissolve by a two-thirds (2/3) vote of the
 21 members present at any regular meeting or at any special meeting of its
 22 members called for that purpose or by the vote required in the bylaws,
 23 whichever requires the greater number."

24
 25 SECTION 10. Arkansas Code 23-17-228 is amended by adding an additional
 26 subsection at the end thereof to read as follows:

27 "(c) Subject to the provisions of the Rural Telecommunications
 28 Cooperative Act, the articles of incorporation of the cooperative and the
 29 bylaws of the cooperative, the cooperative's board of directors shall have the
 30 authority to determine the qualifications for a person to be considered a
 31 'patron' of the cooperative."

32
 33 SECTION 11. Arkansas Code 23-17-231(a) is amended to read as follows:

34 "(a) The board of directors of a cooperative shall have full power and
 35 authority, without authorization by the members thereof, to authorize the
 36 execution and delivery of leases, mortgages or deeds of trust of, or by pledge

1 or encumbering of, any or all of the property, assets, rights, privileges,
 2 licenses, franchises, and permits of the cooperative whether already acquired
 3 or to be acquired, and wherever situated, as well as the revenues thereof, all
 4 upon such terms and conditions as the board of directors shall determine, to
 5 secure any indebtedness of the cooperative to the United States of America or
 6 any agency or instrumentality thereof or to acquire another cooperative formed
 7 and operated under the Rural Telecommunications Cooperative Act."

8
 9 SECTION 12. Arkansas Code 23-17-235 is amended to read as follows:

10 "23-17-235. Liabilities of connecting companies or cooperatives.

11 ~~No telecommunications company or cooperative whose facilities are~~
 12 ~~connected or interconnected with those of another telecommunications company~~
 13 ~~or cooperative shall be liable for the failure of service, construction,~~
 14 ~~maintenance, or operation not occurring on, or occasioned by, its own~~
 15 ~~facilities.~~ No cooperative shall be liable for damage resulting from loss,
 16 interruption, or diminished quality of service due to earthquake, flood,
 17 storm, infestation, pestilence, civil insurrection, act of war, act of
 18 terrorism, software or hardware failure, malfunction, or error, or any cause
 19 beyond the control of the cooperative."

20
 21 SECTION 13. Arkansas Code 23-17-236 is amended to read as follows:

22 "23-17-236. Construction standards.

23 (a) Construction of telecommunications lines and facilities by a
 24 telecommunications company or cooperative shall, as minimum requirement,
 25 comply with the standards of the National Electric Safety Code in effect at
 26 the time of the construction or requirements set up by the Arkansas Public
 27 Service Commission. Construction shall be in such manner and according to
 28 such specifications as will avoid interference with, or hazards to, existing
 29 telecommunications lines, facilities, or systems. In any litigation in a
 30 court of record, any violation by a telecommunications company or cooperative
 31 of the National Electric Safety Code or requirements established by the Public
 32 Service Commission shall merely be evidence of negligence.

33 (b) If a cooperative places or utilizes any telecommunications line,
 34 cable or facility over, upon, or under lands owned or occupied by a
 35 nongovernmental entity with eminent domain rights under Arkansas law, such
 36 nongovernmental entity shall be entitled to just compensation of ten cents

1 (10¢) per linear foot traversed on such entity's land. The reasonableness of
 2 such just compensation for use of such nongovernmental entity's land shall be
 3 presumed. This presumption shall be rebuttable, but in no event shall the
 4 just compensation paid by the cooperative exceed the diminution in value of
 5 the land traversed resulting from such use.

6 (c) Whenever a cooperative shall have placed any telecommunications
 7 line, cable, or facility upon, under, or above private lands, as title shall
 8 be reflected in the deed records of the county in which the lands lie, no
 9 entity having power of eminent domain shall exercise the power or conduct
 10 roadway expansion, relocation activities, or roadside excavation activities in
 11 such a manner as to reasonably require relocation of the telecommunications
 12 line, cable, or facility unless:

13 (1) The written consent of the cooperative is first obtained, or

14 (2) The cooperative is paid the reasonable cost of replacing and
 15 relocating the line, cable, or facility, which payment shall be considered
 16 just compensation to the cooperative."

17
 18 SECTION 14. Arkansas Code 23-17-237 is amended to read as follows:
 19 "23-17-237. Limitation of actions.

20 No suit shall be brought against any telecommunications company or
 21 cooperative by the reason of the installation, use, or maintenance of
 22 telecommunications lines, poles, equipment, or fixtures on any real property,
 23 or within any right-of-way of any public way, unless it is commenced within
 24 two (2) years after the cause of action has accrued."
 25

26 SECTION 15. Arkansas Code 23-17-238 is amended to read as follows:

27 "23-17-238. Indemnification of directors, officers, employees, or agents
 28 - Insurance.

29 (a)(1) A ~~corporation~~ cooperative shall have power to indemnify any
 30 person who was or is a party or is threatened to be made a party to any
 31 threatened, pending, or completed action, suit, or proceeding, whether civil,
 32 criminal, administrative, or investigative, other than an action by or in the
 33 right of the ~~corporation~~ cooperative, by reason of the fact that he is or was
 34 a director, officer, employee, or agent of the ~~corporation~~ cooperative or is
 35 or was serving at the request of the ~~corporation~~ cooperative as a director,
 36 officer, employee, or agent of another corporation, partnership, joint

1 venture, trust, or other enterprise, against judgments, fines, expenses,
2 including attorneys' fees, and amounts paid in settlement actually and
3 reasonably incurred by him in connection with such action, suit, or
4 proceeding, if he acted in good faith and in a manner he reasonably believed
5 to be in, or not opposed to, the best interests of the ~~corporation~~ cooperative
6 and, with respect to any criminal action or proceeding, had no reasonable
7 cause to believe his conduct was unlawful.

8 (2) The termination of any action, suit, or proceeding by
9 judgment, order, settlement, conviction, or upon a plea of nolo contendere or
10 its equivalent, shall not, of itself, create a presumption that the person did
11 not act in good faith and in a manner which he reasonably believed to be in or
12 not opposed to the best interest of the ~~corporation~~ cooperative and, with
13 respect to any criminal action or proceeding, had reasonable cause to believe
14 that his conduct was unlawful.

15 (b) A ~~corporation~~ cooperative shall have power to indemnify any person
16 who was or is a party or is threatened to be made a party to any threatened,
17 pending, or completed action or suit by or in the right of the ~~corporation~~
18 cooperative to procure a judgment in its favor by reason of the fact that he
19 is or was a director, officer, employee, or agent of the ~~corporation~~
20 cooperative or is or was serving at the request of the ~~corporation~~ cooperative
21 as a director, officer, employee, or agent of another corporation,
22 partnership, joint venture, trust, or other enterprise, against expenses,
23 including attorneys' fees, actually and reasonably incurred by him in
24 connection with the defense or settlement of such action or suit if he acted
25 in good faith and in a manner he reasonably believed to be in or not opposed
26 to the best interests of the ~~corporation~~ cooperative, except that no
27 indemnification shall be made in respect of any claim, issue, or matter as to
28 which such person shall have been adjudged to be liable to the ~~corporation~~
29 cooperative, unless and only to the extent that the court of chancery or the
30 court in which such action or suit was brought shall determine upon
31 application that, despite the adjudication of liability but in view of all the
32 circumstances of the case, such person is fairly and reasonably entitled to
33 indemnity for such expenses as the court of chancery or such other court shall
34 deem proper.

35 (c) To the extent that a director, officer, employee, or agent of a
36 ~~corporation~~ cooperative has been successful on the merits or otherwise in

1 defense of any action, suit, or proceeding referred to in subsections (a) and
2 (b) of this section, or in defense of any claim, issue, or matter therein, he
3 shall be indemnified against expenses, including attorneys' fees, actually and
4 reasonably incurred by him in connection therewith.

5 (d) Any indemnification under subsections (a) and (b) of this section,
6 unless ordered by a court, shall be made by the ~~corporation~~ cooperative only
7 as authorized in the specific case upon a determination that indemnification
8 of the director, officer, employee, or agent is proper in the circumstances
9 because he has met the applicable standard of conduct set forth in subsections
10 (a) and (b) of this section. Such determination shall be made:

11 (1) By the board of directors by a majority vote of a quorum
12 consisting of directors who were not parties to such action, suit, or
13 proceeding; or

14 (2) If such a quorum is not obtainable, or, even if obtainable a
15 quorum of disinterested directors so directs, by independent legal counsel in
16 a written opinion; or

17 (3) By the members.

18 (e) Expenses incurred by an officer or director in defending a civil or
19 criminal action, suit, or proceeding may be paid by the ~~corporation~~
20 cooperative in advance of final disposition of such action, suit, or
21 proceeding upon receipt of an undertaking by or on behalf of such director or
22 officer to repay such amount if it shall ultimately be determined that he is
23 not entitled to be indemnified by the ~~corporation~~ cooperative as authorized in
24 this section. Such expenses incurred by other employees and agents may be so
25 paid upon such terms and conditions, if any, as the board of directors deems
26 appropriate.

27 (f) The indemnification and advancement of expenses provided by or
28 granted pursuant to the other subsections of this section shall not be deemed
29 exclusive of any other rights to which those seeking indemnification or
30 advancement of expenses may be entitled under any bylaw, agreement, vote of
31 members or disinterested directors, or otherwise, both as to action in his
32 official capacity and as to action in another capacity while holding such
33 office.

34 (g) The indemnification and advancement of expenses provided by, or
35 granted pursuant to, this section shall, unless otherwise provided when
36 authorized or ratified, continue as to a person who has ceased to be a

1 director, officer, employee, or agent and shall inure to the benefit of the
2 heirs, executors, and administrators of such person.

3 (h) A ~~corporation~~ cooperative shall have power to purchase and maintain
4 insurance on behalf of any person who is or was a director, officer, employee,
5 or agent of the ~~corporation~~ cooperative, or is or was serving at the request
6 of the ~~corporation~~ cooperative as a director, officer, employee, or agent of
7 another corporation, partnership, joint venture, trust, or other enterprise,
8 against any liability asserted against him and incurred by him in any such
9 capacity, or arising out of his status as such, whether or not the ~~corporation~~
10 cooperative would have the power to indemnify him against such liability under
11 the provisions of this section.

12 (i)(1) For purposes of this section, references to:

13 (A) 'The ~~corporation~~ cooperative' shall include, in
14 addition to the resulting ~~corporation~~ cooperative, and constituent
15 corporation, including any constituent of a constituent, absorbed in a
16 consolidation or merger which, if its separate existence had continued, would
17 have had power and authority to indemnify its directors, officers, and
18 employees or agents, so that any person who is or was a director, officer,
19 employee, or agent of such constituent corporation, or is or was serving at
20 the request of such constituent corporation as a director, officer, employee,
21 or agent of another corporation, partnership, joint venture, trust, or other
22 enterprise, shall stand in the same position under the provisions of this
23 section with respect to the resulting or surviving ~~corporation~~ cooperative as
24 he would have with respect to such constituent corporation if its separate
25 existence had continued;

26 (B) 'Other enterprises' shall include employee benefit
27 plans;

28 (C) 'Fines' shall include any excise taxes assessed on a
29 person with respect to an employee benefit plan; and

30 (D) 'Serving at the request of the ~~corporation~~ cooperative'
31 shall include any service as a director, officer, employee, or agent of the
32 ~~corporation~~ cooperative which imposes duties on, or involves services by, such
33 director, officer, employee, or agent with respect to an employee benefit
34 plan, its participants, or beneficiaries.

35 (2) A person who acted in good faith and in a manner he
36 reasonably believed to be in the interest of the participants and

1 beneficiaries of an employee benefit plan shall be deemed to have acted in a
 2 manner 'not opposed to the best interests of the ~~corporation~~ cooperative' as
 3 referred to in this section."
 4

5 SECTION 16. Arkansas Code 23-17-239 is amended to read as follows:

6 "23-17-239. Standards of conduct for directors - Actions taken without
 7 board meeting - Conflicts of interest.

8 (a) A director shall discharge his duties as a director, including his
 9 duties as a member of a committee:

10 (1) In good faith;

11 (2) With the care an ordinarily prudent person in a like position
 12 would exercise under similar circumstances; and

13 (3) In a manner he reasonably believes to be in the best
 14 interests of the ~~corporation~~ cooperative.

15 (b) In discharging his duties, a director is entitled to rely on
 16 information, opinions, reports, or statements, including financial statements
 17 and other financial data, if prepared or presented by:

18 (1) One (1) or more officers or employees of the ~~corporation~~
 19 cooperative whom the director reasonably believes to be reliable and competent
 20 in the matters presented;

21 (2) Legal counsel, public accountants, engineers, or other
 22 persons as to matters the director reasonably believes are within the person's
 23 professional or expert competence; or

24 (3) A committee of the board of directors of which he is not a
 25 member, if the director reasonably believes the committee merits confidence.

26 (c) A director is not acting in good faith if he has knowledge
 27 concerning the matter in question that makes reliance otherwise permitted by
 28 subsection (b) of this section unwarranted.

29 (d) Unless the articles of incorporation or bylaws provide otherwise,
 30 action required or permitted by this chapter to be taken at a board of
 31 directors' meeting may be taken without a meeting if the action is taken by
 32 all members of the board. The action must be evidenced by one (1) or more
 33 written consents describing the action taken, signed by each director, and
 34 included in the minutes or filed with the corporate records reflecting the
 35 action taken.

36 (e) Action taken under this section is effective when the last director

1 signs the consent, unless the consent specifies a different effective date. A
 2 consent signed under this section has the effect of a meeting vote and may be
 3 described as such in any document.

4 (f)(1) A 'conflict of interest transaction' is a transaction with the
 5 ~~corporation~~ cooperative in which a director of the ~~corporation~~ cooperative has
 6 direct or indirect interest. A conflict of interest transaction is not
 7 voidable by the ~~corporation~~ cooperative solely because of the director's
 8 interest in the transaction if any one of the following is true:

9 (A) The material facts of the transaction and the
 10 director's interest were disclosed or known to the board of directors or a
 11 committee of the board of directors and the board of directors or committee
 12 authorized, approved, or ratified the transaction; or

13 (B) The material facts of the transaction and the
 14 director's interest were disclosed or known to the members entitled to vote
 15 and they authorized, approved, or ratified the transaction; or

16 (C) The transaction was fair to the ~~corporation~~
 17 cooperative.

18 (2) For purposes of this section, a director of the ~~corporation~~
 19 cooperative has an indirect interest in a transaction and it should be
 20 considered by the board of directors of the ~~corporation~~ cooperative if:

21 (A) Another entity in which he has a material financial
 22 interest or in which he is a general partner is a party to the transaction; or

23 (B) Another entity of which he is a director, officer, or
 24 trustee is a party to the transaction.

25 (3) For purposes of subdivision (f)(1)(A) of this section, a
 26 conflict of interest transaction is authorized, approved, or ratified if it
 27 receives the affirmative vote of a majority of the directors on the board of
 28 directors, or on the committee, who have no direct or indirect interest in the
 29 transaction, but a transaction may not be authorized, approved, or ratified
 30 under this section by a single director. If a majority of the directors who
 31 have no direct or indirect interest in the transaction vote to authorize,
 32 approve, or ratify the transaction, a quorum is present for the purpose of
 33 taking action under this subsection. The presence of, or a vote cast by, a
 34 director with a direct or indirect interest in the transaction does not affect
 35 the validity of any action taken under subdivision (f)(1)(A) of this section
 36 if the transaction is otherwise authorized, approved, or ratified as provided

1 in that subsection.

2 (4) For purposes of subdivision (1)(B) of this subsection, a
 3 conflict of interest transaction is authorized, approved, or ratified if it
 4 receives the vote of a majority of the members entitled to vote under this
 5 subsection. Proxies voted under the control of a director who has a direct or
 6 indirect interest in the transaction, and proxies voted under the control of
 7 an entity described in subdivision (2)(A) of this subsection, may not be
 8 counted in a vote of members to determine whether to authorize, approve, or
 9 ratify a conflict of interest transaction under subdivision (1)(B) of this
 10 subsection. The vote of those members, however, is counted in determining
 11 whether the transaction is approved under other sections of this chapter. A
 12 majority of the members, whether or not present, that are entitled to vote on
 13 the transaction under this subsection constitutes a quorum for the purpose of
 14 taking action under this section.”

15
 16 SECTION 17. Arkansas Code 23-17-240 is amended to read as follows:

17 “23-17-240. Unclaimed capital credits.

18 (a) When any ~~telephone~~ cooperative formed under the Rural
 19 Telecommunications Cooperative Act, beginning at § 23-17-201 et seq., declares
 20 capital credits, any capital credit which remains unclaimed one (1) year after
 21 notice thereof was transmitted to the last known address of the beneficiary of
 22 the credit, the cooperative shall not be liable for the credit, and it shall
 23 not be deemed unclaimed or abandoned property under the Uniform Disposition of
 24 Unclaimed Property Act, beginning at § 18-28-201 et seq.

25 (b) Any references in Subchapter 2 of Chapter 17 of Title 23 of the
 26 Arkansas Code to ‘this subchapter’ and any references in Chapter 17 of Title
 27 23 of the Arkansas Code to ‘this chapter’ shall be deemed to also reference
 28 this section.”

29
 30 SECTION 18. Arkansas Code 23-17-241 is amended to read as follows:

31 “23-17-241. Opting out of underground damage coverage.

32 ~~Rural telecommunication cooperatives~~ Any cooperative established under the
 33 Rural Telecommunications Cooperative Act, beginning at § 23-17-201, et seq.
 34 may opt out of coverage under the Arkansas Underground Facilities Damage
 35 Prevention Act, beginning at § 14-271-101, et seq. by providing written notice
 36 to the commission by first class mail. Any references in Subchapter 2 of

1 Chapter 17 of Title 23 of the Arkansas Code to 'this subchapter' and any
 2 references in Chapter 17 of Title 23 of the Arkansas Code to 'this chapter'
 3 shall be deemed to also reference this section."

4
 5 SECTION 19. Arkansas Code Title 23, Chapter 17, Subchapter 2 is amended
 6 by adding the following sections to be appropriately renumbered by the
 7 Arkansas Code Revision Commission:

8 "Any cooperative organized prior to January 1, 1979 under the provisions
 9 of the Rural Telecommunications Cooperative Act may enter into an agreement
 10 with any other cooperative so organized for one of the cooperatives to acquire
 11 the other cooperative, subject to the following provisions:

12 (1) Any agreement between cooperatives for one to acquire another shall
 13 be in writing and shall set forth the terms and conditions of the acquisition.

14 (2) Unless otherwise provided in the bylaws of either of the
 15 cooperatives who are party to such an agreement, the agreement shall be
 16 approved on behalf of the cooperative being acquired upon majority vote of the
 17 members of the cooperative being acquired present in person or by proxy at any
 18 regular meeting of the members, or at any special meeting of the members
 19 called for the purpose of voting on the agreement. The agreement shall only
 20 be approved on behalf of the acquiring cooperative upon majority vote of the
 21 directors of the acquiring cooperative.

22 (3) The acquiring cooperative may elect to form a wholly owned
 23 subsidiary corporation, or utilize an existing wholly owned subsidiary
 24 corporation, which subsidiary need not itself be a cooperative, to own and
 25 operate the cooperative being acquired. The validity of the acquisition shall
 26 not be affected by the fact that legal title to the cooperative being acquired
 27 is taken in the name of a wholly owned subsidiary by the acquiring
 28 cooperative.

29 (4) Neither the rights of creditors nor the liens upon the property of
 30 either the acquiring cooperative or the cooperative being acquired shall be
 31 impaired by the acquisition."

32
 33 SECTION 20. All provisions of this act of a general and permanent
 34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
 35 Code Revision Commission shall incorporate the same in the Code.

1 SECTION 21. If any provision of this act or the application thereof to
 2 any person or circumstance is held invalid, such invalidity shall not affect
 3 other provisions or applications of the act which can be given effect without
 4 the invalid provision or application, and to this end the provisions of this
 5 act are declared to be severable.

6
 7 SECTION 22. All laws and parts of laws in conflict with this act are
 8 hereby repealed.

9
 10 SECTION 23. EMERGENCY CLAUSE. It is hereby found and determined by the
 11 Eighty-second General Assembly that due to the significant changes in the
 12 telecommunications industry and the federal laws and regulations applicable
 13 thereto, state law should be changed to reflect the new environment; that it
 14 is in the best interest of the public for member-owned telecommunications
 15 cooperatives to have greater flexibility to maintain and preserve the
 16 commitment to universal availability of reasonably affordable
 17 telecommunications services; that competition and growth in the
 18 telecommunications industry are affected by demographics and population
 19 density and therefore telecommunications cooperatives serving high cost rural
 20 areas often have needs that are different from telecommunications providers
 21 serving only urban areas; and that this act will grant rural
 22 telecommunications cooperatives more flexibility, and thereby enhance their
 23 services to their members. Therefore, an emergency is declared to exist and
 24 this act being immediately necessary for the preservation of the public peace,
 25 health and safety shall become effective on the date of its approval by the
 26 Governor. If the bill is neither approved nor vetoed by the Governor, it
 27 shall become effective on the expiration of the period of time during which
 28 the Governor may veto the bill. If the bill is vetoed by the Governor and the
 29 veto is overridden, it shall become effective on the date the last house
 30 overrides the veto.

31
 32
 33 APPROVED: 3/29/1999
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 36